

From: [Seibert, Apple](#)
To: [Leslie Aguilar](#)
Subject: Review of Your New Entrant 278e and Conflict of Interest Advice - Aguilar, L.
Date: Friday, June 25, 2021 10:24:00 AM
Attachments: [Hatch Act Summary.pdf](#)
[SYN OF G-H-203-205-208 .doc](#)

Leslie,

I have reviewed the Public Financial Disclosure Report that you recently completed in connection with your appointment to a position within the Office of Economic Impact and Diversity. [\(Please let me know when you have been appointed to this position.\)](#) This email is intended to provide you with information and call to your attention certain conflict-of-interest provisions that are applicable to you in the new position. Please review this email carefully.

Participation Restrictions

Section 208, title 18, United States Code, prohibits you from participating personally and substantially, as a Government employee, in any particular matter in which, to your knowledge, a financial interest is held by you, or your spouse, minor child, general partner, or organization in which you are serving as officer, director, trustee, general partner, or employee, or any person or organization with whom you are negotiating or have any arrangement concerning prospective employment. This participation prohibition not only covers such items as contracts, grants, cooperative agreements, and claims, but also includes legislation and policy-making that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. This prohibition is not on having a specific financial interest, but rather on the work that you may perform.

Further, section 2635.502 of the Standards of Ethical Conduct for Employees of the Executive Branch at title 5 provides that where you know that a person with whom you have a “covered relationship” is or represents a party to a particular matter involving specific parties, and where you determine that the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter, you should not participate in the matter unless you have informed your immediate supervisor of the appearance problem and received authorization to participate in the matter. For purposes of this restriction, a “covered relationship” includes:

- (i) A person, other than a prospective employer, with whom you have or seek a business, contractual or other financial relationship that involves other than a routine consumer transaction;
- (ii) A person who is a member of your household, or who is a relative with whom you have a close personal relationship;
- (iii) A person for whom your spouse, parent or dependent child is, to your knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- (iv) Any person for whom you have, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
- (v) An organization, other than a political party, in which you are an active participant.

In addition, President Biden issued an Executive Order on January 20, 2021 (the Biden Ethics Pledge) that expands this “covered relationship” restriction to include all former employers and former clients for whom you personally provided services within a two year period prior to your appointment for a period of two years after your appointment. Therefore, for two years after your appointment you cannot participate in any particular matter involving specific parties, including regulations and contracts, related to your former employer or former clients. Accordingly, you should seek the advice of this office prior to participating in any particular matter in which **Dr.B, the Colorado Democratic Party, the Texas Democratic Party, or Kamala Harris for the People** is a party or represents a party.

Outside Activity Restrictions

There are many statutory and regulatory restrictions applicable to outside activities. Before engaging in any outside employment (including volunteer work where you are providing professional services or serving on a board of directors) you must obtain written approval of your immediate supervisor, and this office. 5 C.F.R. § 3301.103. A number of general guidance documents are attached for your review. Further, you should be aware that 5 C.F.R. § 2635.807(a), with limited exceptions, prohibits a Government employee from receiving compensation from any source other than the Government for teaching, speaking, or writing that relates to your official duties.

Ethics laws also prohibit you from engaging in outside employment or any other outside activity that conflicts with your official duties. An activity conflicts with your official duties if it is prohibited by statute or it would require your disqualification from matters so central or critical to the performance of your official duties that your ability to perform the duties of your position would be materially impaired. These rules also prohibit you from using public office for your own personal gain or the private gain of friends, relatives, persons, or other entities with whom you are affiliated in a non-governmental capacity, and from using official time other than in an honest effort to perform official duties.

Further, there are criminal statutes that restrict Federal government employees from engaging in certain activities with regard to the Government. In general, 18 U.S.C. §§ 203 and 205, prohibit Federal employees from representing, with or without compensation, any party other than the United States with respect to a certain matter involving specific parties before the Executive or Judicial branches of Government in which the United States is a party or has an interest. Representational services include written or oral communications and appearances made on behalf of someone else with the intent to influence or persuade the Government.

Misuse of Position

Regulations exist providing for the proper use of official time and authority, and of information and resources to which you have access resulting from your role as a Federal employee. (5 C.F.R. §§ 2635.701 - 2635.705.) These regulations bar the use of public office for private gain. This broad ban prohibits the following: use of your title, position, or authority for your own private gain, or the private gain of friends, relatives, clients, or anyone with whom you are affiliated in a non-Governmental capacity (including nonprofit organizations in which you serve as an officer, member,

employee, or persons with whom you have or seek an employment or business relationship); use of your title, position, or authority to coerce or induce another person to provide any benefit to yourself or any person identified above; use of any non-public information to further your private interests or those of another, or disclosing confidential or non-public information without authorization; and use of Government property and time for unauthorized purposes.

Gifts

As a Federal employee, you may not accept gifts from a prohibited source or gifts offered because of your official position as a DOE employee. A prohibited source is considered an entity who does business with the Department, is affected by the work of the Department, or has an interest in the work of the Department. There are certain exceptions to this rule. For example, small food items, that are less than a meal, such as coffee, are not considered a gift. You should contact this office before accepting a gift from a prohibited source or one that is offered because of your official position.

Political Activity Restrictions

The Hatch Act on Political Activity (Hatch Act) limits the political activities of Federal employees. 5 U.S.C. §§ 7321-7326. Generally, Department employees are permitted to participate in partisan political activities. However, as a Federal employee, you are prohibited from engaging in political activity while on duty; on government-paid travel; in any room or building occupied in the conduct of government business; wearing a uniform or official insignia identifying the office or position of the employee; or using any vehicle owned or leased by the government. Further, you may not solicit, accept, or receive political campaign contributions on behalf of a political candidate or political party. You also cannot use Government computers, phones, and similar equipment for partisan political activity. Please contact this office for more detailed advice before engaging in partisan political activity.

STOCK Act Filing Requirements: Periodic Transaction Report (OGE Form 278-T) & Negotiating for Employment Notification Form

A Periodic Transaction Report is required to be submitted to report the purchase, sale, or exchange of stocks, bonds, options or futures (if the amount of the transaction is greater than \$1,000) by you, your spouse or dependent children. These reports must be filed: (A) within 45 days of the transaction, or (B) within 30 days of the date you learn of the transaction, whichever occurs earlier. There is a \$200 late filing fee on these reports. The periodic transaction report is not required to be submitted to report the purchase, sale, or exchange of mutual funds, real property, or deposit accounts. Periodic Transaction Reports must be filed using Integrity. Employees who have previously used OMB MAX should use their MAX user ID and password. On the Integrity landing page, <https://integrity.gov>, click "Login to Integrity." Click "Submit" and you should see a filer "My Tasks" dashboard. To start a 278-T, scroll down to the "My Tools" area and click on "278-T." That will display the report tool with brief instructions in a new window where you can enter your information and submit your report.

In addition, if you engage in negotiations for employment with any outside person or organization, *you must report such activities within three days, and you must also recuse yourself from working on any particular matter associated with that organization during the course of your negotiations.*

There is a STOCK Act notification form, which must be filed with our office if you are negotiating for employment with any outside person or organization.

This email provides a general overview of the conflict-of-interest statutes and regulations that will apply to you as an employee at the Department of Energy. Please remain alert for any potential conflicts that may arise and do not hesitate to contact me, or my office at standardsofconduct@hq.doe.gov or (202) 586-1522, with any questions related to these restrictions.

Thanks very much,

Apple Seibert (she / her)
Attorney-Advisor
U.S. Department of Energy
Office of Assistant General Counsel
Ethics and Personnel Law, GC-21
202-586-4503
apple.seibert@hq.doe.gov

2019 HATCH ACT (PARTISAN POLITICAL ACTIVITY) QUESTIONS AND ANSWERS

As a Federal employee you are subject to certain partisan political activity restrictions. These restrictions are contained in the Hatch Act. This memorandum addresses frequently asked questions concerning partisan political activity restrictions.

How the Hatch Act applies to you depends upon your appointment type. All Department of Energy (DOE) employees have restrictions that prohibit them from engaging in certain political activities (e.g., fundraising). There are also restrictions that prohibit certain activities based upon the time and location of the activity (e.g., while on official duty or in the Federal workspace). Career members of the Senior Executive Service (SES), however, may not actively participate in partisan political activity even if off duty and off site. While career SES employees continue to have the ability to express their opinions, they must seek further counsel before engaging in any partisan political activity.

Please read this document carefully, as it contains guidance from the Office of Special Counsel (OSC) regarding when official events may otherwise be deemed to be partisan and prohibited because of the surrounding circumstances. **THIS IS IMPORTANT:** The penalty for violation of the Hatch Act may result in removal from federal service, reduction in grade, debarment from federal employment for a period not to exceed 5 years, suspension, reprimand, or a civil penalty not to exceed \$1,000. The Hatch Act Modernization Act of 2012 modified the penalty structure for violations of the Hatch Act by federal employees to include a range of disciplinary actions.

PROHIBITED ACTIVITIES FOR ALL EMPLOYEES

QUESTION: What types of activities are generally prohibited by the Hatch Act?

ANSWER: You and every other Department of Energy (DOE) employee are prohibited from:

- * Using official authority for the purpose of interfering with or affecting the result of an election (this prohibition includes items such as the timing of grant announcements);
- * Coercing an employee to engage in any political activity, including voting or not voting;
- * Seeking to influence, encourage, or discourage the political activity of any person doing business with or affected by the policies of the Department;
- * Using your official title while engaging in an otherwise permissible political activity;
- * Soliciting, accepting, or receiving financial contributions for a political candidate or party (with one limited exception described below);
- * Being a partisan candidate for public office (There is a limited exception allowing some employees to run as independent candidates in certain partisan elections. Please seek advice from an ethics counselor if you want more information about this exception.); or
- * Using official resources, including a DOE e-mail account, DOE computer, and non-public information, for political purposes

QUESTION: What types of activities are included in the prohibition on soliciting contributions for partisan campaigns?

ANSWER: You and every other DOE employee may not:

- * Request or accept financial contributions for a partisan political party, candidate, or campaign;

- * Sell tickets to a fundraising activity of a partisan political party, candidate, or campaign;
- * Allow your name to appear on an invitation to a fundraiser as a sponsor, host, or a point of contact;
- * Host a fundraiser (however, your spouse may host such a fundraiser, if he or she is not subject to these restrictions);
- * Allow your official title to be used in connection with a fundraising activity;
- * Solicit, accept, or receive uncompensated volunteer services from a subordinate; or
- * 'Like' or share social media posts, or forward emails, that ask for contributions or donations to a political candidate or partisan political group, including invitations to fundraising events.

There is one exception to the general prohibition on soliciting political contributions for partisan campaigns. You may (unless you are a career member of the SES) solicit financial contributions for a political purpose if (1) both you and the person you are soliciting are members of the same Federal labor organization or Federal employee organization, (2) the contribution is for the political committee of the labor or employee organization of which you both are members, and (3) the person being solicited is not your subordinate. All three of these conditions must exist.

PERMITTED ACTIVITIES

QUESTION: What types of activities are permitted by the Hatch Act?

ANSWER: You and every other DOE employee may:

- * Register and vote as you choose;
- * Express opinions about candidates and issues;
- * Contribute money to political organizations or candidates;
- * Participate in nonpartisan voter registration drives;
- * Attend political fundraising functions, rallies, and meetings;
- * Sign political petitions;
- * Campaign for or against an issue that is not specifically identified with a political party, such as referendum questions, constitutional amendments, or municipal ordinances;
- * Campaign for or against a candidate in a nonpartisan election;
- * Serve as an election official whose duties are nonpartisan by law; and
- * Be an independent candidate in a nonpartisan election for public office.

In addition, you may (unless you are a career member of the SES) actively participate in planning, organizing, or conducting a fundraising activity of a candidate for partisan political office, a political party, or a partisan political group, provided that you do not solicit or accept contributions. For example, you may stuff envelopes for a partisan political candidate, campaign, or party, including literature that solicits a money contribution, provided that your name or signature does not appear on the solicitation material.

However, all permissible political activities, including those listed above, are subject to the following four limitations, which prohibit Executive Branch employees from engaging in political activities:

- * While on duty (including while telecommuting and even if using a personal device to engage in political activity),

- * While in any Federal office or workplace (a room or building in which any Federal employee discharges his duties; this includes break rooms, conference rooms, cafeterias, fitness facilities, and union offices, if located inside a federal building),
- * While using a Government vehicle, or
- * While wearing an official uniform, badge, or insignia identifying DOE (this includes shirts and pins with an agency insignia).

Only if you are a DOE employee who was appointed by the President by and with the advice and consent of the Senate (other than the Inspector General), are you exempted from these limitations under certain circumstances.

CONDUCTING MISSION RELATED ACTIVITIES

QUESTION: Can an event I am planning that will involve a DOE official and a current officeholder or candidate be considered political even when the DOE official is talking about the programs of DOE?

ANSWER: Yes. The Office of Special Counsel (OSC), the agency that enforces the Hatch Act, has issued guidance with regard to the conduct of some official activities. As a general matter, an appearance by a DOE official at an event constitutes political activity if the predominant purpose of the appearance is the success or failure of a political party, partisan candidate, or partisan group. Determining whether an event should be classified as official or political requires a frank and thorough factual analysis of the circumstances surrounding the proposed event. The OSC has determined that events that may look official (e.g. ribbon cuttings and grant announcements and other similar mission-related events) can nevertheless be used to increase media attention on political candidates (incumbent officeholders are often simultaneously candidates) and constitute a prohibited political activity. OSC has identified a number of factors for agencies to consider when determining if an event is official or political. Express advocacy of the election or defeat of a candidate is not a pre-requisite to a finding that an event is political and prohibited. **CONTACT AN ETHICS COUNSELOR FOR REVIEW AND ADVICE IF YOU ARE PLANNING A DOE EVENT IN WHICH A CANDIDATE, INCLUDING A CURRENT OFFICEHOLDER, WILL PARTICIPATE.**

Further, because the rules regarding official/political travel are complex, if your duties include scheduling, advancing, or accompanying a DOE official on official travel, you **MUST** contact an ethics counselor for guidance well in advance of departure if travel involving a political purpose is contemplated.

MISCELLANEOUS CAMPAIGN ACTIVITIES

QUESTION: May I volunteer to work for a candidate who is running in a partisan election?

ANSWER: Subject to the four restrictions (only off duty, not in a federal building or government vehicle and without government indicia), you may (unless you are a career member of the SES) actively participate in a partisan election, including participation in the following activities:

- * Organizing or speaking at political rallies;
- * Participating in partisan voter registration drives;
- * Distributing campaign literature;
- * Working on a phone bank (provided that financial contributions are not solicited);
- * Transporting voters to the polls;

- * Managing a campaign; and
- * Supervising or organizing volunteers (provided no subordinates).

Only those employees who are appointed by the President by and with the advice and consent of the Senate may participate in political activities while on duty and may hold partisan political meetings or receptions (other than fundraisers) in their conference rooms during normal business hours. However, any refreshments served at such meetings or receptions must not be paid for with appropriated funds. In addition, DOE employees who are not appointed by the President by and with the advice and consent of the Senate may not attend such meetings

If you are a career SES employee, you may not actively participate in partisan political activities.

QUESTION: May I wear a partisan political button or have a partisan bumper sticker on my car?

ANSWER: Wearing partisan political buttons is considered participating in a partisan political activity and, thus, is subject to the four limitations (i.e., may not be done while on duty, while in a Federal building or workplace, while using a Government vehicle, or while wearing an official uniform, badge, or insignia identifying DOE). However, employees who are appointed by the President by and with the advice and consent of the Senate are exempted from these four limitations under certain circumstances; nevertheless, these employees should not wear partisan political buttons while performing official duties for the Department.

Under no circumstances should a partisan bumper sticker be placed on a Government vehicle. All employees may have partisan bumper stickers on their own private vehicles while commuting, when the vehicle is parked in a Federal garage or parking space, and when the vehicle is being used on official business if such use is infrequent or occasional. However, partisan bumper stickers on a private vehicle must be covered while the vehicle is being used on official business (i.e., travel for which the employee may be reimbursed) if such use is frequent or recurrent or while the vehicle is clearly identified as being on official business.

QUESTION: May I have partisan political material displayed in my Federal office?

ANSWER: No. You, or any other DOE employee, may not display in your office or while you are performing official duties any pictures, signs, stickers, or badges associated with a current political campaign or candidate or a political party. There is an exception, which applies to all candidate photographs concerning personal photographs, if all of the following apply: the photograph was on display in advance of the election season; the employee is in the photograph with the candidate; and the photograph is a personal one (i.e., the employee has a personal relationship with the candidate and the photograph is taken at some kind of personal event or function, for example, a wedding, and not at a campaign event or some other type of partisan political event). An employee must not have a political purpose for displaying the photograph, namely, promoting or opposing a political party or a candidate for partisan political office. Also, you may display political memorabilia from past partisan political campaigns that have no effect on a current campaign.

QUESTION: May I serve as an election official?

ANSWER: In any election, including a partisan election, you and any other DOE employee may serve as an election judge, clerk, or other official if those duties are nonpartisan by law. You may (unless you are

a career member of the SES) serve as a representative of a political party or candidate at a polling place, including serving as a poll watcher, recorder, or challenger. In so serving, you remain subject to the four limitations described above, including the prohibition against wearing a DOE badge or insignia identifying you as a DOE employee.

QUESTION: How may I participate in the activities of a political party?

ANSWER: You and any other DOE employee may, of course, be a member of a political party (or other political group) and may attend its meetings, rallies, caucuses, or conventions, as an observer. Further, unless you are a career member of the SES, you may also actively participate in the functions of a political party or other political group, including performing the following activities:

- * Serving as an officer of or a member of a local, State, or national committee of a political party or club;
- * Organizing or reorganizing a political party or club;
- * Serving as a delegate, alternate, or proxy to a state or national party convention; or
- * Participating fully in and speaking before a nominating caucus, political convention, rally, or other gathering.

However, you should keep in mind that these permitted activities are subject to the four limitations mentioned earlier and the prohibitions against using your influence to affect an election and against soliciting or accepting political contributions.

USING EMAIL AND SOCIAL MEDIA

QUESTION: What is a partisan political email?

ANSWER: A partisan political email is an email you write or receive that is directed toward the success or failure of a political party, candidate for partisan political office or partisan political group. A partisan email may be text, a partisan political cartoon, a newspaper article, or any other manner of communication that carries a partisan political message.

QUESTION: If I receive a partisan political email in my government email account, have I violated the Hatch Act?

ANSWER: No. Simply receiving a partisan political email in your government email account, without more, does not constitute prohibited political activity. However, you must not send or forward that email except you may send that email to your non-government email address (but no one else's address). Simply forwarding such an email to one's personal email account, without more, does not violate the Hatch Act.

QUESTION: If I am on duty or in a government workspace, can I login to my non-government email account and from that account, send or forward a partisan political email?

ANSWER: No. You cannot send a partisan political email from your non-government email address (even using a personal device) while you are on duty (including telecommuting) or in any government workplace or building. Never use your government-owned electronic device to access your non-government email to send or forward partisan political emails.

QUESTION: May I write a letter to the editor or post a comment on a blog endorsing a partisan political candidate?

ANSWER: Yes, if you are not a career SES, you are permitted to express your opinions privately and publicly on political subjects and participate in political activities within the limits described above. If you are a career SES, you may express your opinion privately and publicly on political subjects, including writing a letter to the editor or posting a comment to a blog as long as (i) the activity is not done in concert with a partisan political party, candidate for partisan office or a partisan political group AND (ii) it is not undertaken while on duty, in a Federal building or vehicle, or while wearing indicia of your Federal employment.

Regardless of your appointment type: you may not use your official position or influence to affect the results of an election (including identifying your federal position or office); you must conduct this activity in your personal capacity; and, your comments must not contain a request for political contributions.

QUESTION: If I have listed my official title on my Facebook page, can I fill in the field provided for political views on my Facebook profile?

ANSWER: Yes, you and all other DOE employees may identify the political party that you support on your Facebook profile. Simple identification of the political party, without more, is not political activity.

QUESTION: May I engage in political activity on social media if I am “friends” with or have “followers” who are subordinate employees?

ANSWER: Yes, provided that you, as a supervisor, direct your statements to all of your Facebook “friends” or Twitter “followers,” as opposed to directing your statements to your subordinates or to your subordinates as a subset of your friends (e.g., it is permissible to post your opinion concerning a candidate in your Facebook “status” field). Directing messages to subordinates is viewed as purposefully targeting subordinates with a prohibited message, as opposed to incidental or by-chance communication if it is posted to a much larger universe of individuals. This same answer applies for career SES but with one added restriction. Specifically, career SES are prohibited from taking an active part in partisan political management or partisan political campaigns. Thus, they must not post Facebook links to the website of a political party, partisan political group, or partisan political candidate, because such activity is akin to distributing literature on behalf of those entities or individuals.

QUESTION: May I display campaign logos or candidate photographs as the cover or header photo situated at the top of my social media profile?

ANSWER: Yes; Federal employees may display campaign logos or candidate photos as their cover or header photo on their social media profiles on their personal Facebook or Twitter accounts. This display, usually featured at the top of one’s social media profile, without more, is not improper political activity.

QUESTION: If I change my social media “profile picture” to a candidate’s photograph or campaign logo, would I be prohibited from posting anything during work?

ANSWER: Yes, because a profile picture accompanies most actions on social media, employees would not be permitted, while on duty or in the workplace, to post, “share,” tweet,” or “retweet” any items on Facebook or Twitter, since each such action would show your support for a partisan group or candidate in a partisan race, even if the content of the action is not about those entities.

QUESTION: May I use a social media account in my official capacity to engage in political activity?

ANSWER: No. Any social media account created in your official capacity must be limited to official business matters and remain politically neutral. Any political activity must be confined to your personal social media account, subject to the limitations described in other related questions.

QUESTION: May I become a “friend,” “like,” or “follow” the social media page of a partisan group or candidate in a partisan race?

ANSWER: Yes, but not while on duty or in the workplace.

QUESTION: May I use an alias to “friend,” “like,” or “follow” the social media page of a partisan group or candidate in a partisan race?

ANSWER: Yes, but be advised that federal employees remain subject to the Hatch Act even when they act under an alias.

QUESTION: May I continue to “friend,” “like,” or “follow” an official social media page of a government official after he or she has become a candidate for reelection?

ANSWER: Yes.

QUESTION: What should I do if an individual posts or “tweets” a message soliciting political contributions to a partisan group or candidate in a partisan race, or a link to the political contribution page for such entities, on my personal social media page?

ANSWER: Although the Hatch Act prohibits federal employees from soliciting or receiving political contributions at any time, you are not responsible for the statements of third parties, even when they appear on your social media page. Thus, if an individual posts a link to the political contribution page of a partisan group or candidate in a partisan race, or otherwise solicits political contributions, you need not take any action. The same advice applies to any “tweets” directed at you. However, you must not “like,” “share,” or “retweet” the solicitation, or respond in any way that would tend to encourage other readers to contribute.

QUESTION: I use social media a lot, are there more examples of what is permissible and impermissible for me to do?

ANSWER: The OSC has issued guidance that specifically addresses social media use:

- [OSC Hatch Act Guidance on Social Media](#)
- [OSC Social Media and Email FAQs](#)
- [OSC Social Media Quick Guide](#)

QUESTION: Where can I get information if I have any questions about restrictions on political activities?

ANSWER: Headquarters personnel may direct questions to the Office of the Assistant General Counsel for General Law (202-586-1522), or standardsofconduct@hq.doe.gov. NNSA employees who are duty stationed at Headquarters should contact the NNSA Office of General Counsel (202-586- 8514), or NNSAEthicsNCR@nnsa.doe.gov. Field employees should contact their local field counsel.

SYNOPSIS OF SUBPART G - MISUSE OF POSITION

USE OF PUBLIC OFFICE FOR PRIVATE GAIN. An employee shall not use his public office for his own private gain or for the private gain of friends, relatives or persons with whom he is affiliated in a non-governmental capacity, or for the endorsement of any product, service or enterprise. In particular, an employee shall not use his Government position, title or authority:

In a manner intended to induce another to provide any benefit to himself or to friends, relatives or affiliated persons;

In a manner that could be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another; or

To endorse any product, service or enterprise except in furtherance of statutory authority to do so, in accordance with agency programs to give recognition for achievement or to document compliance with agency standards or requirements.

USE OF NONPUBLIC INFORMATION. An employee shall not engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information to further his own private interests or those of another. Information that is "nonpublic" includes information the employee knows or reasonably should know:

Is routinely exempt from disclosure under the Freedom of Information Act or protected from disclosure by statute;

Is designated as confidential by an agency; or

Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

USE OF GOVERNMENT PROPERTY. An employee has a duty to protect and conserve Government property and to use Government property only for authorized purposes. Authorized purposes are those for which Government property is made available to the public or those purposes authorized in accordance with law or regulation.

USE OF OFFICIAL TIME. Unless authorized in accordance with law or regulation to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. And, an employee shall not encourage, direct, coerce or request a subordinate to use official time to perform activities other than those required in performance of official duties or those authorized in accordance with law or regulation.

SYNOPSIS OF SUBPART H - OUTSIDE ACTIVITIES

GENERALLY. In addition to the standards set forth in this subpart, an employee's outside employment and other activities must comply with all ethical requirements set forth in subparts A through G of the *Standards of Ethical Conduct for Employees of the Executive Branch* (5 C.F.R. 2635), including the requirement to avoid even the appearance of using public office for private gain. For example, the prohibition against use of Government property for unauthorized purposes would prohibit an employee from using the agency photocopier to reproduce documents for his outside organization.

RESTRICTIONS IMPOSED BY OTHER LAWS. Outside activities frequently raise questions about the following:

The restrictions in 18 U.S.C. 203 and 205 on employees engaging in representational activities before the United States;

The constitutional prohibition against accepting any office, title or compensation from a foreign government; and

The Hatch Act, which prohibits most employees' participation in certain partisan political activities.

PRIOR APPROVAL FOR OUTSIDE ACTIVITIES. As required by supplemental agency regulation, an employee must obtain approval before engaging in outside employment or activities. Special Government employees are **not** subject to this requirement.

CONFLICTING OUTSIDE ACTIVITIES. An employee shall not engage in outside employment or activities prohibited by statute or by supplemental agency regulation, or that would materially impair the ability to perform his official duties requiring his disqualification.

RESTRICTIONS ON RECEIPT OF COMPENSATION. With certain exceptions, Presidential appointees to full-time non-career positions shall not receive any outside earned income for outside employment or other outside activities performed during that appointment. Higher-level non-career employees may not, in any calendar year, receive outside earned income which exceeds 15 percent of the rate of pay for Level II of the Executive Schedule. These non-career employees also are prohibited from receiving any compensation for teaching without prior approval, serving as officers or board members of outside entities, practicing certain professions, or being affiliated with firms or other entities that practice those professions.

SERVICE AS AN EXPERT WITNESS. In the absence of specific authorization, an employee shall not represent anyone other than the United States as an expert witness in any proceeding before a court or agency of the United States if the United States is a party or has a direct and substantial interest. This restriction applies even though no

compensation is received. A less restrictive standard applies to special Government employees.

TEACHING, SPEAKING AND WRITING. An employee shall not receive compensation for teaching, speaking or writing that is related to his official duties.

DEFINITION OF RELATED TO DUTIES. Teaching, speaking or writing is "related to an employee's official duties" if:

The activity is undertaken as part of his official duties;

The invitation to engage in the activity was extended primarily because of his official position;

The invitation or the offer of compensation was extended by a person whose interests may be affected by the employee's official duties;

The information draws substantially on nonpublic information; or

For most employees, the subject of the teaching, speaking or writing deals in significant part with any matter presently assigned to the employee, any matter to which the employee had been assigned in the previous one-year period, or to any ongoing or announced policy, program or operation of his agency. Certain noncareer employees are subject to additional restrictions and special Government employees are subject to less restrictive standards.

EXCEPTION FOR TEACHING. An employee may receive compensation for teaching certain courses, notwithstanding that the subject matter is related to his official duties and notwithstanding that he may have been offered the opportunity because of his official position.

FUNDRAISING. Provided that he does not otherwise violate the Standards of Ethical Conduct, an employee may engage in charitable fundraising activities in a personal capacity if he does not use his official title, position or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a prohibited source for purposes of the gift restrictions in subpart B of the *Standards of Ethical Conduct for Employees of the Executive Branch* (5 C.F.R. 2635). A special Government employee, however, may solicit charitable contributions from a prohibited source as long as that person does not have interests affected by the performance of his official duties.

JUST FINANCIAL OBLIGATIONS. Employees shall satisfy in good faith all just financial obligations.

STATUTORY SYNOPSIS
(18 U.S.C. ' ' 203, 205, 208)

The following three criminal statutes place restrictions on Federal employees who engage in outside activities:

Section 203, title 18, United States Code, prohibits you from receiving compensation for representing another in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which the United States is a party or has a direct and substantial interest, before any court or any Federal department or agency.

Section 205, title 18, United States Code, prohibits you from:

- X acting as agent or attorney, with or without compensation, in the prosecution of any claim against the United States;
- X receiving any compensation for assistance in the prosecution of any claim against the United States; or
- X acting as agent or attorney, with or without compensation, in connection with any covered matter in which the United States is a party or has a direct and substantial interest. (A "covered matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.)

Section 208, title 18, United States Code, prohibits you from participating personally and substantially, as a Government employee, in any particular matter in which, to your knowledge, a financial interest is held by:

- X you, your spouse, and your minor child;
- X your general partner;
- X any organization in which you are serving as officer, director, trustee, general partner, or employee; or
- X any person or organization with whom you are negotiating or have any arrangement concerning prospective employment.

This participation prohibition not only covers such items as contracts, grants, cooperative agreements, and claims, but also includes legislation and policy-making that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. This prohibition is not on having a specific financial interest, but rather on the work that you may perform as a Federal employee.