

**From:** [Spear, Kathleen Mulville \(HQ-MB000\)](#)  
**To:** [2635 Modernization](#)  
**Subject:** Proposed Amendments to Standards of Conduct  
**Date:** Monday, April 24, 2023 4:42:59 PM

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Good afternoon,

The National Aeronautics and Space Administration (NASA) submits the following comments to the Office of Government Ethics (OGE) regarding Proposed Amendments to the Standards of Conduct, RIN 3209-AA43.

Comment 1:

OGE proposes to change the language in 5 CFR 2635.502(b) to expand the definition of “covered relationship.” The current regulation provides that an employee has a covered relationship with “[a] person for whom the employee’s spouse, parent or dependent child is, to the employee’s knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.” OGE proposes to remove the qualifier “dependent” before “child.” As a result, the covered relationship element would be triggered by the service of any child of an employee, whether in a dependent status or not. OGE states that “[r]emoving the ‘dependent’ qualifier acknowledges that there may be impartiality concerns relating to certain business relations of an employee’s child regardless of whether that child is a dependent.”

NASA suggests that the word “dependent” be retained. The current language recognizes that a dependent status is a unique parent-child relationship. The child is an adult, so the financial interests of the child are not imputed to the employee-parent under 18 U.S.C. Sec. 208. However, the child is ultimately still reliant on the financial support of the parent. Likewise, although the child may not be living at home, the income the child receives may be offsetting or supplementing support from the parent. That financial co-dependence is more likely to generate a concern of an appearance of a lack of impartiality with regard to both the dependent child and the employer or other entity for which the child is serving. It is more likely to raise an appearance that a parent would favor a dependent child’s employer, given that the employee and child’s financial fortunes are still tied together. Hence, including dependent children in this context makes sense.

However, that intertwined financial relationship is lacking with regard to adult children that are not dependents. In those cases, the appearance concerns are lower with regard

to the child's employer or other entity the child is serving. The child is technically considered financially independent, such that matters impacting an entity would be less likely to be perceived as being driven by indirect financial impacts to the parent. These concerns with non-dependent children have been sufficiently addressed through the other covered relationship provisions, such as those for members of the household or a relative with whom the employee has a close relationship. It is not necessary to make this change to encompass the employers and other entities for which a non-dependent child is providing a service.

In addition, this would not be an inconsequential change for employees, who have not had to recuse in the past from particular matters involving their non-dependent child's employer as a matter of course. This allowed a degree of separation that facilitated the employee's ability to work on matters, without triggering the impartiality restrictions. OGE does not mention that this outcome has been problematic or that any serious concerns about appearances or the integrity of Government operations have been raised in these circumstances.

Comment 2:

In the existing Note to 5 CFR 2635.807(a)(2)(iii) (travel as compensation), OGE proposes to delete the reference to 18 U.S.C. 209 in the reminder that other authorities in some circumstances may limit or preclude an employee's acceptance of travel expenses. OGE notes that the purpose of this deletion is to avoid unnecessary focus on a single statute to the potential exclusion of other applicable authorities.

NASA suggests that the reference to 18 U.S.C. Sec. 209 remain. It is helpful to employees and legal practitioners to be reminded in this context that a criminal statute in particular may be triggered.

Please feel free to contact me with any questions.

Best,

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