

**MARCH 27, 2013**

**LEGAL DIVISION – OFFICE OF GENERAL LAW & ETHICS**

### **ETHICS GUIDANCE ON OUTSIDE ACTIVITIES**

This provides general guidance on the ethics rules that relate to outside activities (i.e., activities conducted by Bureau employees in their personal capacities when they are not at work or officially representing the Bureau). It is not a recitation of every potentially relevant law, rule, or regulation. For specific ethics advice about a particular outside activity, Bureau employees should contact the ethics office at [ethicshelp@cfpb.gov](mailto:ethicshelp@cfpb.gov).

#### *1. Outside Employment Requires a Supervisor's Approval*

Before engaging in outside employment, a Bureau employee must obtain written approval from the employee's supervisor with concurrence from the Designated Agency Ethics Official or designee. 5 C.F.R. § 9401.103(a); 5 C.F.R. § 2635.803. For purposes of this rule, "employment" means any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee, regardless of whether the services are compensated. It includes without limitation, personal services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, speaker, or writer. 5 C.F.R. § 9401.103(b). A specific form must be completed in order to request supervisor approval, which may be obtained from the ethics office. The completed form should be emailed to the ethics office at [ethicshelp@cfpb.gov](mailto:ethicshelp@cfpb.gov).

#### *2. General Prohibition on Conflicting Outside Employment and Activities*

A federal employee must not engage in outside employment or any other outside activity that conflicts with the employee's official duties. An activity will conflict with an employee's official duties if it is prohibited by statute or by an agency ethics regulation or if it would require the employee's disqualification from matters so central or critical to the performance of official duties that the employee's ability to perform the duties of the employee's position would be materially impaired. 5 C.F.R. § 2685.802.

#### *3. Criminal Conflict of Interest*

An employee must not work on any Bureau particular matter that would affect the financial interests of his outside employer or others whose financial interests are imputed to him, which includes the employee's general partner, or any organization or entity in which the employee

serves as an officer, director, trustee, general partner, or employee. This prohibition comes from a criminal conflict of interest law, 18 U.S.C. § 208(a).

#### *4. Appearance of Impartiality*

An employee must take appropriate steps to avoid the appearance of loss of impartiality in the performance of official duties. 5 C.F.R. § 2635.501(a). Specifically, a Bureau employee generally must disqualify himself from participating in a particular matter involving specific parties if it would have a direct and predictable effect on the financial interest of a member of his household, or when he knows that a person with whom he has a “covered relationship” is or represents a party to the matter, if the employee determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. 5 C.F.R. § 2635.502. An employee is deemed to have a “covered relationship” with, among others, an organization in which the employee is an officer, director, agent, consultant, contractor or employee, and any organization where the employee is an active participant. 5 C.F.R. §§ 2635.502(b)(1)(iv) – (v).

#### *5. Prohibition Against Representing a Private Interest before the Government*

While conducting outside business activities (or in any other context), a Bureau employee should not interact with the federal government on behalf of someone else with respect to a case, controversy, claim, contract, grant application, or other particular matter. This is a broad prohibition, and extends beyond CFPB to all other federal agencies. Specifically, a criminal conflict of interest law prohibits a CFPB employee from accepting or soliciting any compensation for any “representational services” in connection with a particular matter in which the United States is a party or has a direct or substantial interest. 18 U.S.C. § 203. A CFPB employee also must not act, with or without compensation, as an agent or attorney for anyone before any federal agency or court in a matter in which the United States is a party or has a direct and substantial interest. 18 U.S.C. § 205.

Under each of these prohibitions, a CFPB employee may not make any communication to or appearance before specified federal entities, with the intent to influence the government on behalf of a third party. Consequently, an employee may not communicate to or appear before any federal agency, department or court, with the intent to influence the government on behalf of an outside third party in connection with any matter in which the United States is a party or has an interest. This prohibition extends to any communication made in connection with a matter “in which there is some controversy or at least potential for divergent views.” (OGE Advisory Opinion 04x12).

#### *6. Compensation for Teaching, Speaking, or Writing Related to Official Duties*

Generally employees may not accept compensation from any source other than the federal government for teaching, speaking, or writing that relates to the employee’s official duties.

5 C.F.R. § 2635.807. The ethics rules concerning what constitutes teaching, speaking, or writing that “relates to the employee’s official duties” are detailed and not intuitive, so Bureau employees should consult with an ethics official before accepting compensation for any teaching, speaking, or writing.

*7. Outside Earned Income Limitation*

Certain noncareer employees are subject to a cap on the amount of outside earned income they can accept. 5 C.F.R. § 2635.804. Any Bureau employee who does not have a career appointment must consult an ethics official before accepting outside income to ensure compliance with this regulation.

*8. Constitutional Restriction on Compensation From a Foreign Government*

A Bureau employee must not accept any form of compensation, gift, title, position, or award from a foreign government, or any entity related to a foreign government, without first consulting the ethics office.

Specifically, the Emoluments Clause of the United States Constitution provides that “no Person holding any Office of Profit or Trust ... shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” U.S. Constitution Article I, Section 9, Clause 8. Thus, the Emoluments Clause prohibits anyone holding an office of profit or trust under the United States from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. 5 C.F.R. § 2635.801(d)(6)

*9. Certain Bureau Employees Are Prohibited From Certain Compensated Activities*

Certain Bureau employees are prohibited from engaging in any compensated outside employment for an entity supervised by the Bureau, or for an officer, director, or employee of such an entity. 5 C.F.R. § 9401.104. These employees are:

- A. An employee serving in an Examiner position
- B. An employee serving in an Attorney position
- C. An employee in the Office of Research, serving as a section chief at CFPB pay band 7 or above or as a senior economist in the Compliance Analysis Section
- D. An employee serving in an investigator, paralegal, or financial analyst position in the Office of Enforcement

- E. An employee required to file a Public Financial Disclosure Report (OGE Form 278)
- F. Any other Bureau employee specified in a Bureau directive or order

Entities supervised by the Bureau are identified in two lists available from the ethics office or on the Wiki (one list is for banks and the other is for nonbanks).

#### *10. Additional Restrictions on Bureau Attorneys*

In addition to all other restrictions, a Bureau employee in any attorney position must not engage in the outside practice of law that might require the attorney to:

- A. Take a position that is or appears to be in conflict with the interests of the Bureau; or
- B. Interpret any statute, regulation, or rule administered or issued by the Bureau.

5 C.F.R. § 9401.105(a).

#### *11. Bureau Restrictions on Seeking Credit Also May Apply to Outside Activities*

An employee must stop working on a particular matter involving specific parties as soon as he or she learns that the following persons are seeking, obtaining or renegotiating credit or indebtedness<sup>1</sup> with an entity that is or represents a party to the matter:

- A. A partnership in which the employee is a general partner
- B. A partnership in which the employee individually or jointly owns or controls more than a 10 percent equity interest
- C. An entity in which the employee individually or jointly holds more than a 25 percent equity interest
- D. An investment club or similar informal investment arrangement between the employee and others

5 C.F.R. § 9401.108(c). (Note: this is not a complete recitation of this regulation – included here are only the provisions that may pertain to an employee’s outside activities).

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<sup>1</sup> Except for credit/charge cards or overdraft protection obtained on terms available to the public.

### *12. Bureau Restrictions on Existing Credit Also May Apply to Outside Activities*

An employee must stop working on a particular matter involving specific parties as soon as he or she learns that the following persons have credit with or are indebted to an entity<sup>2</sup> that is or represents a party to the matter:

- A. A partnership in which the employee is a general partner
- B. A partnership in which the employee individually or jointly owns or controls more than a 10 percent equity interest
- C. An entity in which the employee individually or jointly holds more than a 25 percent equity interest
- D. An investment club or similar informal investment arrangement between the employee and others

5 C.F.R. § 9401.108(c). (Note: this is not a complete recitation of this regulation – included here are only the provisions that may pertain to an employee’s outside activities).

### *13. Restrictions on Fundraising in a Personal Capacity*

A CFPB employee is permitted to fundraise in the employee’s personal capacity as an outside activity, provided the employee does not personally solicit funds from a subordinate or from any person who is known to the employee to be a “prohibited source.” 5 C.F.R. § 2635.808(c)(1)(i). “Prohibited source” means any person who is seeking official action by CFPB, does business or seeks to do business with CFPB, conducts activities regulated by CFPB, has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties, or is an organization a majority of whose members are described above. 5 C.F.R. § 2635.203(d). Furthermore, a CFPB employee may not use or permit the use of his official title, position, or any authority associated with the employee’s public office to further the fundraising effort. 5 C.F.R. § 808(c)(2).

### *14. Service as an Expert Witness*

An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the

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<sup>2</sup> Except for credit/charge cards, overdraft protection, amortizing loans on consumer goods like car loans, student loans, and residential mortgages where the relationship is non-adversarial and the credit was obtained on terms available to the public.

employee's participation is authorized by the agency. 5 C.F.R. § 2635.805. The rule is somewhat modified for Special Government Employees. All employees who are asked to serve as an expert witness in any matter should consult with an ethics official.

*15. Restrictions on Use of Official Title, Position, and Bureau Affiliation*

An employee may not use or permit the use of his official title in a manner that could reasonably be construed to imply that the employee's agency sanctions or endorses the outside entity with which the employee is involved or the employee's activities with the outside entity. 5 C.F.R. § 2635.702(b).

When engaging in outside teaching, speaking, or writing activity or promotion of such activity, a Bureau employee may not use or permit the use of his official title or position to identify him, except that he may permit the inclusion of his title or position as one of several biographical details provided that his title or position is given no more prominence than any other significant biographical details. 5 C.F.R. § 2635.807(b)(1).

An employee may use, or permit the use of, his title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States. 5 C.F.R. § 2635.807(b)(2).

The Bureau has specific policies with respect to setting forth Bureau affiliation, for example, in published articles. Employees must consult with the ethics office for further guidance.

*16. Prohibition Against Using Public Office for Private Gain*

A Bureau employee must not use the employee's official government office for the private gain of himself or anyone else. 5 C.F.R. § 2635.701. A Bureau employee has a duty to protect and conserve government property (for example, official Bureau time, government computer, blackberry, DORA token, facsimile, supplies, and telephone) and generally may not use it for other than authorized purposes. 5 C.F.R. § 2635.704. Similarly, a Bureau employee may not use nonpublic information to further the employee's own private interest or that of another. 5 C.F.R. § 2635.703. Furthermore, the improper release of nonpublic government information can be prosecuted as a federal crime under the general theft of government property statute. 18 U.S.C. § 641. Theft of records as well as conversion of raw information may be prosecuted. Accordingly, it is imperative that no CFPB employee discloses or uses nonpublic information to the government's detriment or for the benefit of any nongovernment entity.

**ETHICS GUIDANCE:**  
**SERVICING IN OFFICIAL CAPACITY VS. PERSONAL CAPACITY**

*These are ethics guidelines only. The Ethics Office recommends employees consult with an Ethics Official for specific ethics advice concerning their particular situations.*

Applicable Rule	Official Capacity	Personal Capacity
Summary:	Employee’s work would further the mission and programs of the Bureau. The employee would be representing the views and advocating on behalf of the Bureau. Also includes those activities classified as “self-directed research” as determined by managers in the Office of Research.	Employee engages in the activity in the employee’s personal capacity as an outside activity. The employee would be representing the employee’s own views and not those of the Bureau. The employee must complete the outside activity approval form and obtain the signature of her supervisor. See 5 C.F.R. § 9401.103.
Leave and Employment Rules:	<ul style="list-style-type: none"> <li>• Activities performed while on duty for the Bureau</li> <li>• Employee may accumulate credit hours and may be authorized compensatory time</li> <li>• Employee covered by Federal Tort Claims Act and workers’ compensation laws</li> </ul>	<ul style="list-style-type: none"> <li>• Must perform activities while off-duty and off-site</li> <li>• Must take leave to attend meetings or engage in activities related to outside position when performed during normal Bureau duty hours</li> </ul>
Gifts of Meals, Travel Expenses, and Other Items of Value	<ul style="list-style-type: none"> <li>• Bureau responsible for payment of travel costs associated with engaging in the activity (<i>Bureau may be able to accept travel expenses offered from non-federal source in limited circumstances if approved by OCFO</i>)</li> </ul>	<ul style="list-style-type: none"> <li>• Employee or outside organization responsible for all travel costs or expenses incurred</li> <li>• Employees must never <i>solicit</i> a gift, which includes anything of market value, from a prohibited source</li> <li>• Employees may accept unsolicited gifts from prohibited sources or given (even in part) based on employee’s official position, only if allowed under the ethics rules governing gifts from an outside entity</li> <li>• Employee should consult with an Ethics Official before accepting any of the following: <ul style="list-style-type: none"> <li>- Compensation</li> <li>- Any tangible item of value</li> <li>- Gifts of travel or hospitality</li> <li>- Free attendance at conferences or events</li> </ul> </li> </ul>

Applicable Rule	Official Capacity	Personal Capacity
Use of Bureau Title and Authority:	<ul style="list-style-type: none"> <li>• May use official title and outside organization may make reference to employee’s position and authority at the Bureau</li> <li>• Content of employee’s contribution is subject to Bureau policies concerning vetting, clearance, media and Congressional liaison, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Must not use or permit the use of Bureau position or title or any authority associated with Bureau office, with a couple of specific exceptions</li> <li>• Must not use Bureau position for the private gain of the outside entity</li> <li>• Must not give the appearance that the Bureau sanctions or endorses the outside entity or the employee’s activities with the outside entity</li> </ul>
Use of Bureau Property and Official Information:	<ul style="list-style-type: none"> <li>• May use Bureau property, public information, and resources to further authorized activities related to the outside entity</li> <li>• If authorized, employee may share nonpublic Bureau information with the outside entity</li> </ul>	<ul style="list-style-type: none"> <li>• May not use official government office for the private gain of an outside entity</li> <li>• Must not follow Bureau’s “limited personal use” policy for use of Bureau resources (e.g., computer, BlackBerry, official time, office supplies, fax, email account) to assist outside entity</li> <li>• May not disclose any nonpublic information to outside entity or misuse any information acquired as part of official duties and which is not generally available to public</li> </ul>
§§ 203/205: Representation of Third Parties Before the Federal Government	N/A - Prohibition does not apply when acting in the proper discharge of official duties.	<ul style="list-style-type: none"> <li>• Employee must not: <ul style="list-style-type: none"> <li>- prosecute a claim,</li> <li>- act as an agent or attorney</li> <li>- represent a third party (even in a non-litigation mater, such as a grant application) before any federal agency or court in which the U.S. is a party or has a direct and substantial interest</li> </ul> </li> <li>• Does not matter if position is paid or unpaid</li> </ul>

Applicable Rule	Official Capacity	Personal Capacity
§ 208: Criminal Financial Interest	<p>Does the employee serve in a position in which the employee would have a fiduciary relationship with the outside entity (e.g., officer, director, trustee)? If yes and the organization is not a nonprofit, to serve in official capacity there must be a:</p> <ul style="list-style-type: none"> <li>• statutory authority authorizing such service (there is none in the CFPA);</li> <li>• release of fiduciary duty from the entity (made in accordance with state law); <b>or</b></li> <li>• 208 waiver issued to the employee by the DAEO, with the concurrence of the Office of Government Ethics.</li> </ul>	<p>If the individual will be an employee, officer, director, trustee, or general partner of the outside organization, all financial interests of the organization are treated as if they belong to the individual, and the employee may not participate personally and substantially in a particular Bureau matter that will directly affect the financial interests of the outside organization.</p>
§ 209: No Supplementation of Salary	<p>Employee may not receive any compensation from the outside entity for performing official duties</p>	<p>Employee must comply with rules concerning outside teaching, speaking, and writing (5 C.F.R. 2635.807), which allow compensation related to official duties only in limited circumstances</p>
Impartiality Concerns: (5 C.F.R. § 2635.502)	<p>Does the employee have a pre-existing “covered relationship” with the outside entity? If yes, the employee generally will not be able to serve in official capacity unless the employee receives authorization from the DAEO.</p>	<ul style="list-style-type: none"> <li>• Employee has “covered relationship” with outside entity if employee is an officer, director, trustee, general partner, agency, attorney, consultant, contractor, employee, active participant in the outside entity, or seeking a business, contractual, or other financial relationship with the entity unless a routine consumer transaction.</li> <li>• Generally must not participate in a Bureau particular matter if an entity with whom the employee has a “covered relationship” is or represents a party to the matter, and a reasonable person would question the employee’s impartiality.</li> </ul>

Applicable Rule	Official Capacity	Personal Capacity
Misc. Issues Related to Written Products:	<p><u>Copyright/Licensing.</u> All works created by U.S. government employees as part of their official duties generally are in the public domain. Such works are not entitled to domestic copyright protection.</p> <p><u>Approved Disclaimer Language.</u> Employee must use disclaimer language approved by the Ethics Office.</p>	<p><u>Copyright/Licensing.</u> Work created may be entitled to copyright protection by the employee or others.</p> <p><u>Approved Disclaimer Language.</u> Employee must use disclaimer language approved by the Ethics Office</p>
Fundraising restrictions	<ul style="list-style-type: none"> <li>• May participate in fundraising in an official capacity only if authorized by a statute, Executive order, or regulation (e.g., Combined Federal Campaign)</li> <li>• Rarely permissible</li> </ul>	<ul style="list-style-type: none"> <li>• May engage in fundraising on behalf of outside organization in personal capacity as long as the employee does not personally solicit funds or other support from: <ul style="list-style-type: none"> <li>- a subordinate, or</li> <li>- any person known to be a prohibited source</li> </ul> </li> <li>• May not use official title, position, or authority to further the fundraising effort</li> </ul>
Financial Disclosure Requirements for Employees who file reports:	<ul style="list-style-type: none"> <li>• No additional reporting requirements (unless the employee receives contributions, awards or other payments under 5 U.S.C. § 4111 or the Foreign Gifts and Decorations Act, 5 U.S.C. § 7342)</li> </ul>	<ul style="list-style-type: none"> <li>• Must disclose any income received from outside entity over \$200</li> <li>• Must disclose gifts and travel reimbursements received from outside entity if in excess of \$350 during reporting period</li> <li>• May need to disclose position with outside entity</li> <li>• Must disclose any ongoing agreements and arrangements with outside entity</li> </ul>