

**U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)**

<b>MD 7.9</b>	<b>ETHICS APPROVALS AND WAIVERS</b>	<b>DT-23-20</b>
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<i>Volume 7:</i>	Legal and Ethical Guidelines
<i>Approved By:</i>	Marian L. Zobler, General Counsel
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**EXECUTIVE SUMMARY**

Management Directive (MD) 7.9, “Ethics Approvals and Waivers,” is revised to—

- Simplify and more expressly identify the appropriate agency designee for various waivers and authorizations;
- Provide expanded discussion and guidance on the relevant approval standard and factors that may be considered for various waivers and authorizations;
- Reorganize the topics discussed in the Handbook by subject matter; and
- Include guidance for additional ethics-based approvals in existing law or regulation.

In addition, the NRC has made revisions to this MD as part of its efforts to use more inclusive language in its publications. These changes, which include changing “Chairman” to “Chair” in some instances, are purely editorial and do not affect the meaning of the guidance in this document.

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## I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) that employees receive approval or a waiver before engaging in certain activities or accepting certain gifts or awards. The NRC's policy is in accordance with ethics statutes and regulations promulgated by the Office of Government Ethics (OGE). The NRC is authorized under OGE regulations to designate individuals who can act upon requests for approvals or waivers. All approvals or waivers must be in writing by the appropriate agency designee unless otherwise specified in Handbook 7.9. The agency designee is to consult with an ethics official and use sound judgment in determining whether to grant a request for an approval or a waiver and has the discretion to deny a request, when warranted.

## II. OBJECTIVES

- Inform employees of situations when prior approval or a waiver from an agency designee is required.
- Inform employees which NRC officials have been delegated authority to grant the necessary approvals or waivers.

## III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

### A. Chair

1. Appoints the Designated Agency Ethics Official (DAEO).
2. May issue waivers from the NRC's prohibited securities rule and grant extensions of the period of time to divest prohibited securities in accordance with Management Directive (MD) 7.7, "Prohibited Securities."
3. After consultation with the Office of the General Counsel (OGC), serves as the agency designee for issuing the following waivers and authorizations—
  - (a) Conflict of interest waivers described in Handbook 7.9, Section I.C, to members of the Chair's personal staff, the Inspector General (IG), heads of offices reporting to the Chair or the Commission, and special Government employees (SGEs) serving on, or being considered for, an advisory committee established under the Federal Advisory Committee Act;

- (b) Authorizations relating to covered relationships or other reasonable appearance concerns, described in Handbook 7.9, Section I.D, to members of the Chair's personal staff and heads of offices reporting to the Chair or the Commission; and
  - (c) Authorizations relating to "widely attended gatherings," described in Handbook 7.9, Section I.E.1, to members of the Chair's personal staff and heads of offices reporting to the Chair or the Commission.
4. May approve outside employment requests consistent with MD 7.8, "Outside Employment."
  5. After consultation with OGC and the Director of OGE, certifies that the applicable criteria are met to waive post-employment restrictions for a former employee or other former Executive Branch employee.
  6. Certifies that the national interest requires an SGE to act as agent or attorney for another person in the performance of work under an NRC grant or a contract, described in Handbook 7.9, Section I.H.
  7. As appropriate, consults with the other Commissioners before acting upon a request for an approval or waiver.
  8. After consultation with OGC, may issue authorizations or approvals concerning the Chair's own conduct, excluding waivers issued pursuant to 18 U.S.C. 208(b)(1).

#### **B. Commissioners**

1. After consultation with OGC, serves as the agency designee for issuing the following waivers and authorizations to members of the Commissioner's personal staff:
  - (a) Conflict of interest waivers described in Handbook 7.9, Section I.C;
  - (b) Authorizations relating to covered relationships or other reasonable appearance concerns, described in Handbook 7.9, Section I.D; and
  - (c) Authorizations relating to "widely attended gatherings," described in Handbook 7.9, Section I.E.1.
2. May approve outside employment requests consistent with MD 7.8.
3. After consultation with OGC, may issue authorizations or approvals concerning their own conduct, excluding waivers issued pursuant to 18 U.S.C. 208(b)(1).

#### **C. Inspector General (IG)**

1. After consultation with OGC, serves as the agency designee for issuing the following waivers and authorizations to employees within the Office of the Inspector General (OIG):
  - (a) Conflict of interest waivers described in Handbook 7.9, Section I.C;

- (b) Authorizations relating to covered relationships or other reasonable appearance concerns, described in Handbook 7.9, Section I.D; and
  - (c) Authorizations relating to “widely attended gatherings,” described in Handbook 7.9, Section I.E.1.
2. May approve outside employment requests consistent with MD 7.8.
  3. After consultation with OGC and the Director of OGE, certifies that the applicable criteria are met to waive post-employment restrictions for a former employee or other former Executive Branch employee to furnish information to OIG.
  4. May delegate these responsibilities to the Deputy Inspector General.
  5. After consulting with OGC, may issue authorizations or approvals concerning the IG’s own conduct, excluding waivers issued pursuant to 18 U.S.C. 208(b)(1).

#### **D. General Counsel**

1. As designated by the Chair, serves as the DAEO.
2. Advises the Chair, Commission, IG, Executive Director for Operations (EDO), and office directors on requests for waivers and approvals addressed in this MD.
3. Approves the acceptance of non-NRC awards and honorary degrees awarded to employees, as described in Handbook 7.9, Section I.E.2.
4. Approves service as an expert witness on behalf of a private party before a U.S. court or agency if the United States is a party or has an interest in the proceeding, as described in Handbook 7.9, Section I.F.2.
5. Authorizes noncareer employees to engage in teaching for compensation, as described in Handbook 7.9, Section I.F.3.
6. Consults with OGE before advising the Chair on requests for waivers under 18 U.S.C. 207 and, where practicable, before providing advice to the agency designee on requests for waivers under 18 U.S.C. 208.
7. Approves special Combined Federal Campaign events where prizes or gifts are offered to participants, as described in Handbook 7.9, Section I.I.
8. Except where expressly reserved to the DAEO, may delegate the above responsibilities to deputy ethics officials in OGC or regional counsels, as appropriate.

#### **E. Executive Director for Operations (EDO)**

1. After consultation with OGC, serves as the agency designee for issuing the following waivers and authorizations to employees in the Office of the EDO (OEDO) and to heads of offices and regional administrators who report to the EDO:
  - (a) Conflict of interest waivers, described in Handbook 7.9, Section I.C;

- (b) Authorizations relating to covered relationships or other reasonable appearance concerns, described in Handbook 7.9, Section I.D; and
  - (c) Authorizations relating to “widely attended gatherings,” described in Handbook 7.9, Section I.E.1.
2. May approve outside employment requests, and may concur on outside employment authorizations granted by heads of offices and regional administrators who report to the EDO, consistent with MD 7.8.
  3. May delegate these responsibilities to a Deputy Executive Director for Operations (DEDO).

#### **F. All Office Directors and Regional Administrators**

1. After consulting with OGC, serve as the agency designee for issuing the following waivers and authorizations to employees within their respective office or region:
  - (a) Conflict of interest waivers described in Handbook 7.9, Section I.C;
  - (b) Authorizations relating to covered relationships or other reasonable appearance concerns, described in Handbook 7.9, Section I.D; and
  - (c) Authorizations relating to “widely attended gatherings,” described in Handbook 7.9, Section I.E.1.
2. May approve outside employment requests consistent with MD 7.8.
3. May delegate these responsibilities to a deputy office director, deputy regional administrator, or equivalent.

#### **G. Deputy Ethics Officials**

1. As authorized by the DAEO, provide employees with advice and guidance on all matters pertaining to Government ethics, including the approvals and waivers described in this MD.
2. Unless expressly reserved to the DAEO or another agency designee, serve as the agency designees for all other approvals and waivers described in this MD.

### **IV. APPLICABILITY**

The policy and guidance in this MD apply to all current employees, including special Government employees.

### **V. DIRECTIVE HANDBOOK**

Handbook 7.9 contains references to and detailed descriptions of the various activities, awards, and gifts that require prior approval, and the procedures for obtaining such approval.

## VI. DEFINITIONS

### **Employee**

All NRC employees, including members of the Commission and the Inspector General, a special Government employee (unless otherwise indicated), or an employee of another Government agency assigned or detailed to the NRC for a period in excess of 30 calendar days.

### **Former Employee**

A person who previously served as an employee as defined in “Employee” of this section.

### **Special Government Employee**

An NRC employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or an intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. This may include, among others, NRC consultants, experts, members of advisory committees, and summer interns.

## VII. REFERENCES

### ***Code of Federal Regulations***

5 CFR Part 410, Subpart E, “Accepting Contributions, Awards, and Payments From Non-Government Organizations.”

5 CFR 950.502, “Solicitation Methods.”

5 CFR Part 2635, “Standards of Ethical Conduct for Employees of the Executive Branch.”

5 CFR Part 2636, “Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees.”

5 CFR Part 2640, “Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest).”

5 CFR Part 2641, “Post-Employment Conflict of Interest Restrictions.”

5 CFR Part 5801, “Supplemental Standards of Ethical Conduct for Employees of the Nuclear Regulatory Commission.”

### ***Executive Order***

Executive Order 12731, “Principles of Ethical Conduct for Government Officers and Employees.”

***Nuclear Regulatory Commission Documents***

Management Directive—

7.7, “Prohibited Securities.”

7.8, “Outside Employment.”

7.12, “Enforcement of Post-Employment Restrictions”

10.62, “Leave Administration.”

14.1, “Official Temporary Duty Travel.”

Staff Requirements Memorandum (SRM)-SECY-91-148, “GSA Interim Travel Regulations” (June 12, 1991) ([ML073470836](#)).

***United States Code***

5 U.S.C. 552, “Public information; agency rules, opinions, orders, records, and proceedings.”

5 U.S.C. 4111, “Acceptance of contributions, awards, and other payments.”

5 U.S.C. 7342, “Receipt and disposition of foreign gifts and decorations.”

18 U.S.C. 203, “Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government.”

18 U.S.C. 205, “Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government.”

18 U.S.C. 207, “Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches.”

18 U.S.C. 208, “Acts Affecting a Personal Financial Interest.”

31 U.S.C. 1353, “Acceptance of travel and related expenses from non-Federal sources.”

**U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)**

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<i>Contact Name:</i>	Eric Michel	Meghan Creedon

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## I. INTRODUCTION

Ethics statutes and implementing regulations promulgated by the Office of Government Ethics (OGE) require that Federal employees receive approval or a waiver from an agency designee before engaging in certain activities or accepting certain gifts or awards. The U.S. Nuclear Regulatory Commission (NRC) has also issued supplementary ethics regulations governing the conduct of employees that require written authorizations or include provision for the issuance of waivers. Management Directive (MD) 7.9 identifies the individuals who have been given authority to grant these approvals or waivers. This handbook describes in greater detail the activities or acts that require approval or waiver and specifies the procedures for obtaining a decision on the request.

## II. PROHIBITED SECURITIES OR OTHER FINANCIAL INTERESTS

- A.** The NRC’s Prohibited Securities Rule (5 CFR 5801.102, “Prohibited securities”) prohibits employees covered by the rule from owning securities issued by any entity on an annually published list. The Chair is authorized to grant a waiver to permit a covered employee, or the employee’s spouse or minor child, to retain ownership of an otherwise prohibited security. The Chair is also authorized to grant extensions of the period to divest prohibited securities. More information can be found in MD 7.7, “Prohibited Securities.”
- B.** In addition to the NRC’s Prohibited Securities Rule, OGE regulations (5 CFR 2635.403, “Prohibited financial interests”) authorize an agency to prohibit or restrict an individual employee from acquiring or holding a financial interest or class of financial interests based upon a determination of a substantial conflict of interest. Such an employee will be provided a reasonable period of time to divest, not to exceed 90 days except in cases of unusual hardship. The appropriate agency designee for purposes of this determination is the same designee who would be authorized to issue a conflict of interest waiver to the employee as described in Section III of this handbook. The agency designee must consult with an ethics official in the Office of the General Counsel (OGC) before making such a determination.

## III. CONFLICT OF INTEREST WAIVERS

- A.** A criminal conflict of interest statute, 18 U.S.C. 208(a), and OGE’s implementing regulations (5 CFR Part 2635, Subpart D, “Conflicting Financial Interests”), prohibit

Federal employees from participating personally and substantially in any particular matter that the employee knows will have a direct and predictable effect on their personal financial interests, or the financial interests of another person that are imputed to the employee. These “imputed” interests include the interests of—

1. The employee’s spouse, minor child, or general partner;
2. An entity in which the employee serves as officer, director, trustee, general partner, or employee; and
3. A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

**B.** Agencies may waive the general prohibition in 18 U.S.C. 208(a) in the following instances:

1. Pursuant to 18 U.S.C. 208(b)(1), agencies may waive the general prohibition in 18 U.S.C. 208(a) in an individual case upon a determination that the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee’s services to the Government. In making this determination, the agency designee may consider—
  - (a) The nature of the financial interest involved (e.g. stock or other securities, arrangement for future employment, spouse’s employment interest);
  - (b) The identity of the person whose financial interest is involved, and if the interest is not the employee's, the relationship of that person to the employee;
  - (c) The dollar value of the disqualifying financial interest, if it is known or can be estimated;
  - (d) The value of the financial instrument or holding from which the disqualifying financial interest arises, and its value in relationship to the individual’s assets;
  - (e) The nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter; and
  - (f) Any other relevant factors, including the sensitivity of the matter; the need for the employee’s services in the particular matter; and any adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that the integrity of the employee’s services would be questioned by a reasonable person.
2. Additionally, pursuant to 18 U.S.C. 208(b)(3), agencies may waive the general prohibition in 18 U.S.C. 208(a) in an individual case as applied to a special Government employee (SGE) serving on, or being considered for, an advisory committee established under the Federal Advisory Committee Act (FACA). Such a waiver may be issued to an eligible SGE upon a determination that the need for the individual’s services outweighs the potential for a conflict of interest created by the

- financial interest involved. In making this determination, the agency designee may consider—
- (a) The nature of the financial interest involved (e.g., stock or other securities, arrangement for future employment, spouse’s employment interest);
  - (b) The identity of the person whose financial interest is involved, and if the interest is not the individual’s, the relationship of that person to the individual;
  - (c) The uniqueness of the individual’s qualifications;
  - (d) The difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee;
  - (e) The dollar value of the disqualifying financial interest, if it is known or can be estimated;
  - (f) The value of the financial instrument or holding from which the disqualifying financial interest arises, and its value in relationship to the individual’s assets; and
  - (g) The extent to which the disqualifying financial interest will be affected individually or particularly by the actions of the advisory committee.
3. Additional information concerning the issuance of a conflict of interest waiver is available in 5 CFR Part 2640, Subpart C (“Individual Waivers”).
- C.** Employees seeking a waiver from the conflict of interest prohibition in 18 U.S.C. 208(a) should first contact a deputy ethics official and provide all relevant information concerning the financial interest involved and the NRC particular matters that may directly and predictably affect the interest. The deputy ethics official will assist the employee in determining whether a waiver is necessary and, if so, will assist in preparing the requisite authorization paperwork for the appropriate agency designee identified in Section III of the MD. Where practicable, OGC is also required to consult with OGE before the agency designee issuing the waiver.
- D.** All waivers issued pursuant to 18 U.S.C. 208(b) must be in writing, signed by the appropriate agency designee, and must be issued before the employee participates in any particular matter that would affect the financial interest. Waivers cannot be issued retroactively for past conduct.
- E.** OGC will provide a copy of the executed waiver to OGE. By law, these waivers are also made publicly available upon request, though the NRC may withhold information that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), such as personal privacy information.
- F.** Any waiver issued to a Commissioner pursuant to 18 U.S.C. 208(b) must be coordinated with OGE and the Office of White House Counsel (see Executive Order 12731, “Principles of Ethical Conduct for Government Officers and Employees”).

- G.** OGE is also authorized to issue regulations exempting certain financial interests that are too remote or inconsequential to warrant an employee's disqualification under 18 U.S.C. 208(a). These exemptions are codified at 5 CFR Part 2640, Subpart B "Exemptions Pursuant to 18 U.S.C. 208(b)(2)." An employee may rely on these generally codified exemptions without seeking any additional authorization. However, employees are strongly encouraged to confirm with a deputy ethics official the applicability of a given exemption in a particular situation. Employees covered by the NRC's Prohibited Securities Rule cannot rely on exemptions codified in 5 CFR Part 2640 with respect to prohibited security interests but must instead seek and obtain a waiver in accordance with MD 7.7, "Prohibited Securities."

#### **IV. COVERED RELATIONSHIPS AND REASONABLE APPEARANCE ISSUES**

- A.** OGE regulations (5 CFR Part 2635, Subpart E, "Impartiality in Performing Official Duties") recognize that, even where an actual conflict of interest under 18 U.S.C. 208(a) does not exist, in certain circumstances an employee's participation in a particular matter involving a specific party may nonetheless raise a question in the mind of a reasonable person with knowledge of the relevant facts about the employee's ability to remain impartial. Agencies may authorize an employee to participate in such a matter based on a determination that, in light of all relevant circumstances, the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.
- B.** Most commonly, situations requiring an agency authorization under 5 CFR, Subpart E, involve a particular matter specifically involving a member of the employee's household or a person with whom the employee otherwise has a "covered relationship." A "covered relationship" includes, but is not limited to, a relative with whom the employee has a close personal relationship; the employer of a spouse, parent, or dependent child; the Federal employee's former employer or client from within the previous one year; or an organization in which the employee is an "active participant" (5 CFR 2635.502, "Personal and business relationships"). However, in any set of circumstances that would reasonably raise a question regarding an employee's impartiality, employees are strongly encouraged to consult with a deputy ethics official to determine whether obtaining a written authorization is desirable or in the best interests of the employee or the agency.
- C.** If an employee determines that their participation in a particular matter involving a specific party would cause a reasonable person with knowledge of the relevant facts to question their impartiality, the employee may not participate in the matter unless they have received an advance written authorization from the appropriate agency designee. The agency designee may also, on their own initiative or upon request by the employee's supervisor, determine that a written authorization is required in a given set of circumstances.

- D.** An employee seeking an authorization under this section should first contact a deputy ethics official to discuss the circumstances warranting the authorization. The deputy ethics official will confirm the employee is eligible to seek an authorization and will assist the employee in preparing the written authorization for the appropriate agency designee identified in Section III of this directive. The approval standard, and the relevant factors the agency designee may consider when determining whether to issue the authorization, are specified in 5 CFR 2635.502(d). The agency designee may consider—
1. The nature of the relationship involved;
  2. The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
  3. The nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
  4. The sensitivity of the matter;
  5. The difficulty of reassigning the matter to another employee; and
  6. Adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.
- E.** If approved by the agency designee, the employee must provide a copy of the final approval to a deputy ethics official for recordkeeping.
- F.** The following additional authorizations concerning the potential appearance of a lack of impartiality may also be issued by the appropriate agency designee:
1. “Extraordinary Payments”
    - (a) OGE regulations (5 CFR 2635.503, “Extraordinary payments from former employers”) require employees to recuse for a period of two years from participating in any particular matter involving the employee’s former employer if that employee received an “extraordinary payment” (as defined in the regulation) from the former employer prior to entering government service. This mandatory recusal can be waived in writing upon a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee’s ability to act impartially in a matter in which the former employer is or represents a party.
    - (b) The appropriate agency designee for purposes of this waiver is the same designee who would be authorized to issue a conflict of interest waiver to the employee as described in Section III of this handbook. The agency designee must consult with OGC prior to issuing such a waiver.

## 2. Extended Recusal Upon Conclusion of Employment Negotiations

- (a) When a Federal employee seeks employment with a non-Federal entity, 18 U.S.C. 208 and OGE's implementing regulations (5 CFR Part 2635, Subpart F, "Seeking Other Employment") require the employee to recuse from participating personally and substantially in any particular matter that would directly and predictably affect the prospective employer's financial interests. This recusal obligation lasts for the duration of time that the employee is considered to be "seeking employment," and generally ends when the employee or prospective employer rejects the possibility of employment and all discussions of possible employment terminate. However, agencies may, in an appropriate case, determine that an employee who had previously sought employment but is no longer seeking employment will nevertheless be subject to a period of recusal upon the conclusion of employment negotiations (5 CFR 2635.606(b), "Offer rejected or not made").
- (b) The appropriate agency designee for purposes of making this determination is the same designee who would be authorized to issue a written authorization to the employee as described in Section IV of this handbook. The agency designee must use the factors in 5 CFR 2635.502(d) (described above in Section IV.D of this handbook) when making this determination. The agency designee must consult with OGC before making this determination.

## V. ACCEPTANCE OR DISPOSITION OF GIFTS

OGE regulations (5 CFR Part 2635, Subpart B, "Gifts from Outside Sources") prohibit Federal employees from accepting a gift that is offered to them because of their official position or offered by a "prohibited source" (generally speaking, a person or organization who does business with, is regulated by, or is seeking official action from the employee's agency), unless an exception applies. Several of these exceptions require that the employee obtain advance written approval or other authorization before accepting a gift. These approvals and the appropriate agency designee are discussed below.

### A. Widely Attended Gatherings

OGE regulations (5 CFR 2635.204(g)) permit employees to accept an unsolicited gift of free attendance at all or appropriate parts of a "widely attended gathering" when authorized in writing by the appropriate agency designee. Employees who are interested in obtaining this authorization should first contact a deputy ethics official, who will assist the employee in preparing the authorization for the appropriate agency designee identified in Section III of this directive.

#### 1. Definitions

- (a) An event is "**widely attended**" if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present. An example of a widely attended gathering would be an event that is open to members throughout a given industry or profession, or if those in attendance

represent a range of persons interested in a given matter and there will be an opportunity to exchange ideas and views among invited persons.

- (b) **“Free attendance”** includes waiver of all or part of the fee for an event or provision of food, refreshments, entertainment, or materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

## 2. Written Authorization Required

The agency designee may authorize an employee or employees to accept a gift of free attendance at all or appropriate parts of a widely attended gathering if, after consultation with an agency ethics official, the designee issues a written determination that—

- (a) The event constitutes a “widely attended gathering,” as defined above;
- (b) The employee’s attendance at the event is in the agency’s interest because it will further agency programs and operations;
- (c) The agency’s interest in the employee’s attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties; and
- (d) If a person other than the sponsor of the event invites or designates the employee as the recipient of the gift of free attendance and bears the cost of that gift, the event is expected to be attended by more than 100 persons and the value of the gift of free attendance does not exceed \$480 (an amount that is updated periodically for inflation—consult 5 CFR 2635.204(g) for current amount).

## 3. Determination of Agency Interest

The agency designee must determine that the agency’s interest in the employee’s attendance at the event sufficiently outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties. Relevant factors in making this determination may include—

- (a) The importance of the event to the agency;
- (b) The nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation, and the significance of the employee’s role in any such matter;
- (c) The purpose of the event;
- (d) The identity of other expected participants;
- (e) Whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment;

- (f) Whether the NRC is also providing persons with views or interests that differ from those of the donor with access to the NRC; and
- (g) The market value of the gift of free attendance.

#### 4. Invitation Extended to Spouse or Other Guest

When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who invited the employee, the agency designee may also authorize the employee to accept an unsolicited offer of free attendance to an accompanying spouse or guest to participate in all or a portion of the same event. This authorization must also be provided in writing. For purposes of determining the overall market value of the gift of free attendance, the value of free attendance by both the employee and the spouse or other guest is aggregated.

#### 5. Official Duty Status

An employee who is subject to a leave system can only accept a gift of free or reduced attendance as described in this section if they are attending the event while on approved leave (i.e., personal time) or excused absence granted in accordance with agency procedures (see MD 10.62, "Leave Administration"). Employees subject to a leave system cannot use the widely attended gathering gift exception to accept an offer of free or reduced attendance to an event the employee is attending while on official time. With limited exception, the NRC must bear the cost of any attendance fee charged at events for employees while on official duty (though the agency may permissibly accept a discounted "government" rate, if one is offered, that is available to all Government employees).

Example: An employee who is attending a multi-day conference while on official time may not obtain a "widely attended gathering" authorization to accept an offer of a waived or reduced conference fee. However, if there is an ancillary social event taking place after the conclusion of the conference that is being hosted by a prohibited source and where items of value (food, refreshments, etc.) will be offered to attendees, the employee may be able to receive a "widely attended gathering" authorization to attend the social event while on personal time.

#### 6. Presenting Information on Behalf of the Agency

- (a) An employee who is presenting information on behalf of the agency at a conference or other event while in official duty status may accept an offer of free or reduced attendance without obtaining an authorization described in this section. Such free attendance is not considered a "gift" because the employee is contributing to the sponsor's event. However, if the event is a multi-day event, free attendance may only be accepted under this gift exclusion on any day when the employee is in fact presenting information.



- (b) Any employee whose presence is deemed to be essential to the presenting employee's participation in the event may also accept an offer of free or reduced attendance under this exclusion to accompany the presenting employee.
- (c) An employee presenting information on behalf of the agency at an event may also accept an invitation by the sponsor of the event to a meal that is exclusive to other participating presenters. Attendance at a "speaker's meal" does not require separate authorization.
- (d) If an employee presenting information on behalf of the agency at an event has also received from the event sponsor an unsolicited offer of free or reduced attendance to a spouse or one other guest, and if others in attendance will also generally be accompanied by a spouse or other guest, a deputy ethics official may authorize the employee to accept the gift, either orally or in writing.

#### **B. Awards and Honorary Degrees**

OGE regulations (5 CFR 2635.204(d), "Awards and honorary degrees") permit Federal employees to accept bona fide awards for meritorious public service or achievement, or an honorary degree from an institution of higher education, in certain circumstances.

1. With respect to acceptance of awards, the award and any item incident to the award may not be from a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties, or an association or organization with a majority of members who have such interests. Further, if the award or any item incident to the award is in the form of cash or an investment interest, or if the aggregate value of the award and any item incident to the award exceeds \$200, an agency ethics official must confirm in writing that the award is made as part of an "established program of recognition," as defined in the regulation.
2. With respect to honorary degrees, an employee may accept an honorary degree from an institution of higher education if an agency ethics official has made a written determination that the timing of the award would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.
3. Only the DAEO or a deputy ethics official may provide these approvals.

#### **C. Official Travel Expenses**

##### **1. Non-profit organizations**

Federal law (5 U.S.C. 4111, "Acceptance of contributions, awards, and other payments") generally authorizes employees to accept payment of travel, subsistence, and other expenses incident to attendance at training or other meetings if the donor is a registered 501(c)(3) tax-exempt organization. Implementing regulations issued by the Office of Personnel Management (OPM) (5 CFR Part 410, Subpart E, "Accepting Contributions, Awards, and Payments From Non-Government

Organizations”) require that acceptance of such contributions be in writing and only upon a determination that—

- (a) The contribution, award, or payment is not a reward for services to the organization before the training or meeting; and
- (b) Acceptance of the contribution, award, or payment—
  - (i) Would not reflect unfavorably on the employee’s ability to carry out official duties in a fair and objective manner;
  - (ii) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;
  - (iii) Is compatible with the Ethics in Government Act of 1978, as amended; and
  - (iv) Would otherwise be proper and ethical for the employee concerned given the circumstances of the particular case.
- (c) The relevant management official approving the employee’s travel must consult with a deputy ethics official before approving the traveling employee’s acceptance of expenses under this section. If approved, the expenses are to be paid by the 501(c)(3) organization to the employee personally, not the agency, and appropriate reduction will be made to the employee’s travel authorization and voucher. More information is available in MD 14.1, “Official Temporary Duty Travel.” A copy of the written approval must be provided to a deputy ethics official for recordkeeping.

## 2. Other non-Federal sources

Federal law (31 U.S.C. 1353, “Acceptance of travel and related expenses from non-Federal sources”) generally authorizes executive branch agencies to accept payment, or authorize an employee to accept payment on the agency’s behalf, from other non-Federal sources for travel, subsistence, or related expenses incurred by the employee incident to attendance at a meeting or similar function relating to the employee’s official duties. However, as a matter of policy the Commission has not exercised this authority (see Staff Requirements Memorandum (SRM)-SECY-91-148, “GSA Interim Travel Regulations” (June 12, 1991) ([ML073470836](#))). Thus, acceptance of travel and related expenses from non-Federal sources cannot be approved under this particular authority. This does not restrict or limit the availability of any other statutory provisions providing the NRC with gift acceptance authority or the authority to recover expenses associated with services rendered, which is not addressed by this MD.

## D. Foreign gifts

1. The Foreign Gifts and Decorations Act (5 U.S.C. 7342, “Receipt and disposition of foreign gifts and decorations”) (FGDA) restricts the ability of Federal employees to accept gifts from any unit or representative of a foreign governmental authority

- unless the gift is of a kind to which Congress has expressly consented in the statute. Generally speaking, employees may only accept unsolicited gifts below “minimal value” (currently \$480, an amount periodically adjusted by the General Services Administration for inflation). However, if rejecting a tangible gift of more than minimal value would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, the employee may accept the gift, which then becomes the property of the United States.
2. The FGDA also authorizes employees to accept gifts of travel or expenses for travel, such as transportation, food, or lodging, in excess of minimal value if—
    - (a) The expenses are for travel taking place entirely outside the United States, and
    - (b) Acceptance is appropriate and consistent with the interests of the United States, as permitted by the employee’s agency.
  3. Employees should consult with a deputy ethics official, whenever feasible, before accepting any gift from a representative of a foreign government.

#### E. Miscellaneous

OGE regulations require employees to receive prior approval before accepting or dispositioning otherwise prohibited gifts in the following circumstances. Such approval may be obtained from a deputy ethics official.

1. OGE regulations (5 CFR 2635.204(h), “Social invitations”) permit employees to accept food, refreshments, and entertainment (but not including travel or lodging) for the employee and an accompanying spouse or other guest at a “social event” attended by several persons if the invitation is unsolicited, not from a prohibited source, and no fee is charged to any person in attendance. However, if the sponsor of the social event, or the person who invited the employee to the social event, is not an individual, the employee must obtain a written determination that their attendance would not cause a reasonable person with knowledge of the relevant facts to question the employee’s integrity or impartiality.
2. OGE regulations (5 CFR 2635.204(m), “Gifts of informational materials”) permit an employee to accept an unsolicited gift of “informational materials” (i.e., writings, recordings, documents, records, or other items that are educational in nature, not intended for entertainment display or decoration, and contain information that relate the employee’s official duties or the general subject matter relating to the agency’s mission) provided that the aggregate market value of all informational materials received from one person does not exceed \$100 in a calendar year. If the aggregate market value of all informational materials from one source exceeds this amount, the employee must obtain a written determination that acceptance would not be inconsistent with 5 CFR 2635.201(b), “Considerations for declining otherwise permissible gifts.”

3. OGE regulations (5 CFR 2635.206, “Proper disposition of prohibited gifts”) provide employees with several options for disposing gifts that were accepted without proper authorization. With respect to gifts that are perishable and not practical to return, an employee may, after consulting with a deputy ethics official or the employee’s supervisor, give the item to an appropriate charity, share the item within the employee’s office, or destroy the item.

## **VI. OUTSIDE ACTIVITIES**

### **A. Outside Employment**

1. The NRC has a supplemental ethics regulation (5 CFR 5801.103, “Prior approval for outside employment”) that requires employees (excluding SGEs) to obtain prior written authorization before engaging in compensated outside employment with entities described in the regulation. MD 7.8, “Outside Employment,” describes the process for seeking such approval from the appropriate agency designee.
2. Outside employment that does not fall within 5 CFR 5801.103 does not require prior written authorization. However, employees who engage in compensated outside employment are strongly encouraged to consult with a deputy ethics official to confirm their outside employment activity does not offend other governmentwide prohibitions, such as the prohibition on receiving compensation for representational services in a matter in which the United States is a party or has a substantial interest (18 U.S.C. 203), or the prohibition on receiving compensation for “teaching, speaking, and writing” that relates too closely to the employee’s official duties (5 CFR 2635.807).

### **B. Expert Witness**

1. OGE regulations (5 CFR 2635.805, “Service as an expert witness”) prohibit an employee from serving, other than on behalf of the United States, as an expert witness 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 employee’s participation is authorized by the employee’s agency.
2. Any employee who wishes to serve as an expert witness in a proceeding described above must contact a deputy ethics official. Authorization may be given by the DAEO, after consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the Department of Justice and the agency with the most direct and substantial interest in the matter. The DAEO must determine—
  - (a) The employee’s service as an expert witness is in the interest of the Government; and
  - (b) The subject matter of the testimony does not relate to the employee’s official duties as defined in 5 CFR 2635.807(a)(2)(i).

3. An SGE who is a member of a statutory advisory committee (such as the Advisory Committee on Reactor Safeguards), or any SGE who has or is expected to serve more than 60 days in a period of 365 consecutive days, is additionally restricted from serving as an expert witness in any proceeding where the NRC is a party or has a direct and substantial interest, unless authorized by the DAEO as described above.
4. Authorization from the DAEO to serve as an expert witness in a proceeding described in this section is required regardless of whether the employee is receiving compensation for their service.
5. Employees do not need authorization to serve as a fact witness when subpoenaed by an appropriate authority.

### **C. Teaching for Compensation by Noncareer Employees**

1. OGE regulations (5 CFR 2636.307, "Requirement for advance authorization to engage in teaching for compensation") require that covered noncareer employees (see 5 CFR 2636.303 for definition) must obtain advance approval from the DAEO before receiving compensation for teaching. This requirement applies to any activity that involves oral presentation or personal interaction, the primary function of which is to instruct or otherwise impart knowledge or skill. It includes not only formal classroom presentations but also extends to instruction on an individual basis or in an informal setting.
2. An NRC covered noncareer employee seeking authorization to engage in compensated teaching must submit a written request to the DAEO, who may approve the request only when—
  - (a) The teaching will not interfere with the performance of the employee's official duties or give rise to an appearance that the teaching opportunity was extended to the employee principally because of their official position;
  - (b) The employee's receipt of compensation does not violate any of the limitations and prohibitions on honoraria, compensation, or outside earned income contained in 5 CFR Part 2636; and
  - (c) Neither the teaching activity nor the employee's receipt of compensation therefore will violate applicable standards of conduct or any statute or regulation related to conflicts of interest.
3. The DAEO will either grant or deny the request in writing, and the determination is final.

## **VII. POST-EMPLOYMENT REPRESENTATIONS BY FORMER FEDERAL EMPLOYEES**

- A. Federal law (18 U.S.C. 207) and OGE implementing regulations (5 CFR Part 2641, "Post-Employment Conflict of Interest Restrictions") subject former Federal employees to

various post-employment restrictions that limit or preclude their ability to engage in certain representational activities after terminating government service. Generally speaking, former employees are prohibited from attempting to influence any United States Government employee on behalf of another person (i.e., a new employer or client) if the representation relates to a particular matter involving specific parties in which the former employee previously participated while an NRC employee. Former supervisors and former “senior” employees are subject to additional restrictions. More information is available in MD 7.12, “Enforcement of Post-Employment Restrictions.”

- B.** OGE has codified certain exceptions to these post-employment restrictions in 5 CFR Part 2641, Subpart C (“Exceptions, Waivers, and Separate Components”). Among others, there is an exception permitting former employees to make communications, including appearances, solely for the purpose of furnishing “scientific or technological information” if the head of the agency, in consultation with the Director of OGE, publishes a certification in the Federal Register that the following criteria are satisfied:
1. The former employee has outstanding qualifications in a scientific, technological, or other technical discipline (involving engineering or other natural sciences, as distinguished from a nontechnical discipline such as law, economics, or political science);
  2. The NRC matter in which the communication would be furnished requires the use of such qualifications; and
  3. The national interest would be served by the former employee’s participation.
- C.** The former employee seeking to make the otherwise prohibited communication must forward a written request to the Chair addressing these criteria. Before approving any such request, and after consultation with OGC and the relevant program office, a draft of any proposed certification must be provided to the Director of OGE for comments. After considering any such comments, the Chair may approve or disapprove the request. If approved, the certification must be published in the Federal Register and a copy furnished to the Director of OGE. The Chair may revoke the certification, with written notice to the former employee and to OGE, at any time.

## **VIII. REPRESENTATION BY SPECIAL GOVERNMENT EMPLOYEES**

- A.** Federal law (18 U.S.C. 203 and 18 U.S.C. 205) generally prohibits Federal employees, other than in the discharge of their official duties, from providing representational services (or accepting compensation for representational services performed) on behalf of another person in relation to particular matter in which the United States is a party or has a substantial interest. This prohibition applies in more limited force to SGEs, who generally are only prohibited from providing such representational services in connection with particular matters involving specific parties and only those matters in which the SGE actually participated as a Government employee, or which are actually pending in the SGE’s own agency.

- B.** SGEs are uniquely eligible for a waiver that permits certain representational activity in connection with work under Federal grants and contracts. The agency head may grant a waiver to an SGE to represent another person “in the performance of work under a grant by, or a contract with or for the benefit of, the United States” upon a written certification published in the *Federal Register* that such activity is required by the national interest.

## **IX. FUNDRAISING**

OPM regulations governing the Combined Federal Campaign (CFC) (5 CFR 950.502, “Solicitation methods”) permit and encourage events such as “campaign kick-offs, victory events, awards, and other non-solicitation events” to build support for the CFC. Such events must be consistent with agency and OGE ethics regulations and policy. If prizes are offered at CFC special events, they must be modest in nature and value and approved in advance by the DAEO or a deputy ethics official.