

DOCUMENTOS

CÓDIGOS DE CONDUCTA EN EL ORDEN TRIBUTARIO

Autores: *José A. Rozas Valdés*^(*)

Profesor titular de Derecho Financiero y Tributario (UB/Abat Oliba CEU)

Montserrat Casanella Chuecos^(**)

Profesora de Derecho Financiero y Tributario (Universidad de Barcelona)

Pablo García Mexía^(***)

Profesor Doctor de Derecho Constitucional de la Universidad Carlos III de Madrid. Director de Sintagma, Centro de Estudios Estratégicos

DOC. N.º 7/06

(*) rozas@uao.es

(**) montse_casanellas@ub.edu

(***) pg.mexia@syntaxma.org



INSTITUTO DE
ESTUDIOS
FISCALES

N.B.: Las opiniones expresadas en este documento son de la exclusiva responsabilidad de los autores, pudiendo no coincidir con las del Instituto de Estudios Fiscales.

SUMARIO

1. CÓDIGOS DE CONDUCTA EN LA ADMINISTRACIÓN TRIBUTARIA DE EEUU
2. CÓDIGOS DE CONDUCTA EN LA ADMINISTRACIÓN TRIBUTARIA DEL REINO UNIDO
3. PROPUESTA DE CÓDIGO DE BUEN GOBIERNO DE LA ADMINISTRACIÓN TRIBUTARIA DEL ESTADO

ANEXOS

1. EEUU
 - A. Code of Ethics for Government Service
 - B. Standards of Ethic Conduct for Employees of the Executive Branch (5 CFR Part. 2635)
 - C. Supplemental Standards of Ethical Conduct for Employees of the Treasury Department (5 CFR Part 3101)
 - D. Treasury Rules of Conduct (31 CFR Part 0)
 - E. Rules of Conduct of IRS (Documento 7098)
 - F. Employee Conduct and Ethics (IRM 30.4.8.5)
2. REINO UNIDO
 - A. Seven Principles on Public Life (1995)
 - B. Capítulo IV del Civil Service Management Code (1993)
 - C. Treasury's Code of Conduct
 - D. Commissioners for Revenue and Customs Act (2005)
 - E. HM Revenue & Customs Code Of Conduct Guidance
 - F. Code of Practice HM Revenue&Customs on the Disclosure of Information
3. CÓDIGO DE BUEN GOBIERNO DE LA ADMINISTRACIÓN TRIBUTARIA

1. CÓDIGOS DE CONDUCTA EN LA ADMINISTRACIÓN TRIBUTARIA DE EEUU¹

SUMARIO: Planteamiento; 1.-Fuentes Normativas y Documentación Administrativa; 2.-El Empleado en Activo: 2.1.-Comportamiento General; A) *El Debido Respeto*, B) *Conducta*; 2.2.-Identificación del Cliente; 2.3.-Conflictos de Intereses, A) *Intereses Personales*, B) *Intereses Profesionales*, C) *Intereses Patrimoniales*; 2.4.-Deber de Confidencialidad; 3.-El Empleado en Excedencia; 4.-Relaciones Especiales. Selección de Jurisprudencia. Relación de Normativa y documentación Administrativa. Bibliografía Citada

PLANTEAMIENTO

No forma parte de la tradición administrativa española reciente² la estandarización de códigos de conducta de los empleados públicos, salvo en lo que se conoce como “incompatibilidades” y “declaración de intereses”. Mayor profusión tienen estos códigos en el sector privado, siendo relativamente frecuentes entre los miembros de corporaciones profesionales, como los Colegios de Abogados, en el sector sanitario³ o, de forma creciente, en lo que se ha dado en llamar el “gobierno corporativo” de las sociedades mercantiles.

La situación en *United States of America*⁴ es completamente distinta. En el Ordenamiento jurídico norteamericano los códigos de conducta, la estandarización de modelos de comportamiento, la expresión formal de los modos éticos de actuar, la regulación pormenorizada de lo que es compatible o no con el ejercicio de una determinada función, no es solo una cuestión que goce de una inveterada tradición –en el sector público y en el privado– sino que tiene una más que considerable trascendencia en el orden social, académico, administrativo y jurídico.

Ciertamente, sería infantil pretender una transposición acrítica de la experiencia americana en el Ordenamiento jurídico español: no funcionaría. Más allá de la manida diferente tradición jurídica a la que pertenecen uno y otro sistema, cuando se habla de códigos de conducta es imprescindible pensar en los fundamentos culturales de las personas destinadas a aplicarlos, del modelo de relaciones que preside la sociedad en la que se pretende que se enraícen. Al fin y al cabo, cuando hablamos de conductas, hablamos de hábitos de comportamiento, de costumbres, en este caso administrativas. Algo que, a pesar del desprecio con el que se trata en la teoría de las fuentes del Derecho, tiene una fuerza inaudita en la configuración de las relaciones jurídicas: el llamado por Ihering “poder normativo de lo fáctico” que un eminente Catedrático de Derecho administrativo –Rafael Gómez Ferrer– traducía como el primero de entre los principios fundamentales que rigen el actuar de los empleados públicos: “Aquí siempre se ha hecho así”.

Es en esos fundamentos culturales en los que la distancia entre la sociedad española y la americana es verdaderamente abismal. No se trata aquí, ni mucho menos, de manifestarse sobre

¹ Este trabajo se ha realizado, en buena medida, durante una estancia como *Visiting Scholar* en la *Boston College Law School* durante el verano de 2005. Debo agradecer a los Profesores Hugh J. Ault y James R. Repetti, así como al personal de Biblioteca y de servicios –Lauren Gannon y Michael Mitsukawa, de forma especial– la inapreciable ayuda que me prestaron a lo largo de la misma.

² No cabe duda de que en la Historia de nuestro Derecho público es posible encontrar ejemplos, bien tempranos, de normas que pueden enmarcarse en el ámbito de lo que constituye el objeto de este estudio. Por ejemplo, quienes fiscalizaban las cuentas de la *Generalitat* de Cataluña en el siglo XV, “*els oidors (...) no estaven autoritzats a rebre dels particulars béns o diners; tan sols se’ls va permetre rebre algun bé consumible. S’intentava evitar aquesta pràctica per tal que es veíés una actuació dels oficials del General separada de qualsevol tipus d’influències socials.*” [SÁNCHEZ DE MOVELLÁN TORRENT (2004), pág. 80]. Pero siendo esto así, lo que no existe en nuestra tradición administrativa inmediata es un conjunto trabado de lo que se podría denominar “ordenamiento ético de los empleados públicos” comparable al que existe en los países de tradición jurídica anglosajona.

³ Tanto en lo relativo a protocolos de atención al paciente como en las cuestiones de investigación –no es preciso recordar la trascendencia social y jurídica que tiene la llamada “bioética”– la normativa y los comités éticos son bien conocidos en el sector sanitario [vid. por todos, el Decreto 84/2005, de 21 de julio, por el que se regula el Comité Ético de Investigación Clínica de Cantabria (BOCA de 11 de agosto de 2005)].

⁴ El gentilicio aplicable a los EEUU es equívoco. No es el único país de América, ni de América del Norte, y tampoco es el único país de dicho continente que se denomina Estados Unidos. A los efectos de este trabajo, en todo caso y salvo que se diga lo contrario, se utilizarán indistintamente, por ser su uso común, los términos “americano”, “norteamericano” y “estadounidense” como gentilicios de *United States of America*.

la superioridad o desventajas de uno y otro modelo. Sería simplista y, como toda generalización, injusto. Si es necesario, por el contrario, ser consciente de ello, si se aspira a lograr una comparación dotada de cierta utilidad. No se puede olvidar que, para bien y para mal, hablar de códigos de conducta es referirse a la dimensión ética del actuar que se asienta sobre principios morales, en buena medida contruidos desde tradiciones religiosas bien distintas. No por tópica⁵ deja de ser real la distancia que separa la ética protestante –predominante en la sociedad americana– de la católica, en la que tiene su base la que nos es propia.

Así, por ejemplo, entre los americanos la palabra dada tiene un valor que no conserva en nuestro actuar cotidiano. Un anglosajón, por ejemplo, difícilmente entiende que para comprar un piso sea necesario dirigirse a un servicio público de registro que acredite que la oferta de venta tiene una base cierta. Ya en el orden tributario, una consecuencia de ello, del demérito que el perjurio comporta en el entorno social estadounidense, es la importancia que en el mismo tiene –en todas las fases del procedimiento– la declaración verbal, escrita y, con frecuencia, jurada.

En realidad, buena parte del contenido de los códigos de conducta que aquí se examinan ya está presente en la función pública española, bien sea en normas propiamente dichas –como es el caso, señaladamente, de las incompatibilidades o las declaraciones de intereses– bien sea en disposiciones administrativas de distinta condición, en los principios generales del Derecho, o, sencillamente, en el modo en el que la generalidad de quienes ejercen funciones públicas desarrollan su tarea: con sentido común. Lo que sí venía resultando ajeno al Derecho español⁶ es, por ejemplo, el hecho de codificar los estándares de comportamiento que se esperan del empleado público, hacerle firmar que los ha recibido y encomendar a un determinado servicio administrativo el seguimiento, desarrollo, interpretación y exigencia de cumplimiento de las cuestiones éticas.

No se parte aquí de la premisa de que la dimensión ética de la Administración tributaria española tenga carencias graves que la recepción de los modelos americanos pueda resolver. Sencillamente, se pretende divulgar el modo en el que el Derecho americano regula y aplica estas cuestiones para –desde una realidad cultural, social y administrativa diversa– sea posible plantearse qué nos puede enseñar y en qué es posible emularlo. Sin perder de vista que los orígenes de nuestros modelos de organización social, de nuestros hábitos públicos de conducta –la revolución americana y la francesa, en las que cada una de nuestras comunidades políticas tiene sus referentes fundacionales modernos, tienen en común poco más que la denominación– son bien distintos.

Atribuido a culturas diferentes se cuenta de tres interlocutores que discutían sobre el modo en el que en cada una de sus sociedades concebía el Derecho. Uno de ellos afirmaba que en su país todo lo que no estaba prohibido estaba permitido; el segundo, en cambio, decía que en el suyo todo lo que no estaba permitido estaba prohibido; por fin sentenciaba el tercero, que en el suyo, incluso lo que estaba prohibido estaba permitido. En particular cuando se habla de estándares de conducta, la eficacia que pueda tener su codificación es discutible. Quienes se han ocupado de cuestiones deontológicas o morales no están de acuerdo sobre si lo más conveniente es definir bien los principios de actuación o detallar pormenorizadamente los comportamientos que se esperan de su destinatario⁷. Por otra parte, no es automático que lo que, en especial en materia de costumbres, funciona razonablemente bien en un entorno vaya a tener los mismos resultados cuando se implanta en otro diferente. Lo que, en cualquier caso, tiene interés es conocer como y con qué resultados se trata en una determinada sociedad occidental una cuestión –el comportamiento de los empleados públicos– que no deja de plantear dificultades parecidas en cualquier que sea la entidad pública de la que se trate.

Asumiendo que el estudio se lleva a cabo desde la perspectiva de la Administración tributaria española, el análisis se ha centrado en el examen de las reglas de conducta que resultan aplicables al organismo que en EE.UU. es responsable de la administración del sistema tributario federal: el *Internal Revenue Service* (en adelante, *IRS*).

⁵ Es imposible dejar de referirse al respecto a *La ética protestante y el origen del capitalismo* de MAX WEBER y al no menos clarividente análisis que del particular hace ALEXIS DE TOCQUEVILLE en *La Democracia en América*.

⁶ El Gobierno en ejercicio ya ha actuado en este sentido con la adopción de un acuerdo, presentado por el Ministro de Administraciones públicas, titulado “Código de buen Gobierno” (BOE del 7 de febrero de 2005).

⁷ Los propios códigos de conducta a los que se va a hacer referencia hacen constar expresamente que no se trata de prontuarios exhaustivos, sino ejemplificativos, de forma y manera que no por no estar descrita una determinada conducta se ha de extraer la conclusión de que es aceptable.

En un primer orden de cosas se hace una relación de la normativa y documentación administrativa que rige la conducta de los empleados del *IRS* (epígrafe 1). En el examen detenido de dichas pautas de conducta se ha seguido la sistemática de los mas destacados tratadistas del particular⁸, diferenciando entre las que se refieren a los empleados en activo (epígrafe 2) y las que afectan a los empleados en excedencia (epígrafe 3), estructurando el análisis de las primeras en cuatro bloques de cuestiones: comportamiento general (epígrafe 2.1), identificación del cliente (epígrafe 2.2.), conflictos de intereses (epígrafe 2.3.) y deberes de confidencialidad (epígrafe 2.4.).

1. FUENTES NORMATIVAS Y DOCUMENTACIÓN ADMINISTRATIVA

Para comprender el sistema de fuentes que rige la conducta de los empleados de una determinada Agencia pública norteamericana es preciso entender las líneas maestras que presiden la organización administrativa de este país. A diferencia de lo que ocurre en España, en EEUU no existe el Consejo de Ministros como órgano colectivo que personifica la dirección y gobierno de la actividad publica estatal⁹. El Presidente se apoya, en su acción de gobierno, en distintos Departamentos y en Agencias con distinto régimen jurídico, dependientes o independientes.

Desde 1978, con carácter independiente desde 1989, una de estas Agencias es la *Office of Government Ethics*¹⁰ (en adelante *OGE*) que tiene como cometido específico el desarrollar y gestionar todo lo relativo a conflictos y declaraciones de intereses, códigos de conducta y restricciones en la actividad de quienes han trabajado o trabajan para algún organismo del Ejecutivo federal. La normativa y programas de esta Agencia, naturalmente, alcanzan a los empleados del *IRS*¹¹. De modo que el primer Código de Conducta que es de aplicación a los mismos es el que esta en vigor para todos los que prestan servicios al Gobierno de los EEUU: *Standards of Ethic Conduct for Employees of the Executive Branch*¹². Su contenido desarrolla pormenorizadamente el decálogo de conducta aprobado por el Congreso el 11 de julio de 1958 con la denominación de *Code of Ethics for Government Service* que en diez sintéticos y expresivos apartados delinea las pautas de conducta que han de presidir la actividad de los empleados públicos.

De entre las Agencias independientes, una de las siete grandes –quizás de la de mayor entidad– es el *IRS*, que –si bien esta encuadrada en el ámbito de responsabilidad de lo que sería nuestro Ministerio de Hacienda, *Department of Treasury*– se rige por su propia normativa y esta gobernado por un Comisionado (*Commissioner of IRS*) que es nombrado por el Presidente y confirmado por el Senado, con un mandato de cinco años. El perfil que se le supone al Comisionado no es el de un tributarista, sino el de un gerente de grandes organizaciones, contando al respecto con un amplio margen de maniobra en la gestión de todos los recursos de la Agencia, incluida la política de contratación, despido y retribuciones del personal que trabaja para la misma. En lógica coherencia con este perfil, el Comisionado no participa en la proposición de las políticas legislativas en materia tributaria, que son de la exclusiva responsabilidad de la Secretaría del Tesoro.

⁸ WOLFMAN, B.; HOLDEN, J.P., y HARRIS, K.L., (1999). Aunque se ha publicado una obra posterior de este trabajo (2004), se ha utilizado la precedente en la que –a diferencia de lo que se hace en la más reciente– se reproduce como anexo el documento (7098) que, encabezado como *Rules of Conduct*, el *IRS* exige firmar a sus empleados.

⁹ Salvo referencias marginales, el estudio se limita a la Administración federal norteamericana que, siendo el corazón del sistema americano de impuestos, no es la única –como es obvio– que lleva a cabo funciones tributarias en dicho país. Los impuestos sobre las ventas –a salvo de algunos impuestos federales sobre consumos específicos– son responsabilidad de los Estados, que en algunos casos también aplican impuestos sobre la renta o/y el patrimonio. Las entidades locales, por su parte, tienen como principal fuente de rendimientos el gravamen de la propiedad inmobiliaria.

¹⁰ Para una información general sobre esta Agencia *cf.* www.usoge.gov.

¹¹ Como a toda persona que trabaja para el Ejecutivo. Como se ha hecho notar, esta Agencia tan solo se ocupa de la administración de los tributos federales. Todo lo que se refiere a la programación, ejecución y control del gasto público es responsabilidad de otros organismos administrativos nítidamente separados del *IRS*, como el *General Accountancy Office* –dependiente del Congreso– o las colosales oficinas presupuestarias, la del Presidente y la del Congreso, que tienen sus particulares códigos de conducta, ajustados a lo específico de los cometidos que se les encomiendan: *vid.*, por ejemplo, 5 CFR 1300.1 para los empleados de la *Office of Management and Budget*, del Departamento de la Presidencia, que no del Ministerio de Hacienda, responsable de la elaboración de los programas presupuestarios. Sobre el procedimiento presupuestario americano puede verse J.A. ROZAS VALDÉS, “El procedimiento presupuestario americano”, en Asamblea. Revista parlamentaria de la Asamblea de Madrid, núm. 3, 2000, págs. 151-181.

¹² *Cfr.* 5 CFR Part. 2635. Toda la normativa que en Derecho español llamaríamos reglamentaria en sentido lato está codificada en un código descomunal, *Code of Federal Regulations* (en adelante *CFR*), ordenado por materias en Títulos, capítulos y partes.



En 1998¹³ el *IRS* fue objeto de una profunda reforma y reestructuración, uno de cuyos ejes principales fue pasar de una organización basada en parámetros territoriales y funcionales –como, en términos generales, la española– a otra en la que el punto de referencia fuesen las necesidades de cada grupo específico de contribuyentes. Con arreglo a esta reforma, *IRS Restructuring and Reform Act*, la Agencia tributaria americana se organiza en cuatro grandes divisiones que se ocupan de todo lo que afecta a otros tantos grupos de contribuyentes –empleados y rentistas, pequeños empresarios y profesionales, grandes empresas, entidades públicas y exentas– junto a las que trabajan otras unidades administrativas transversales que se ocupan de ámbitos específicos de actividad: comunicación, investigación criminal, defensa del contribuyente, apelaciones y *Office of Chief Counsel* (en adelante *OCC*), son las más relevantes¹⁴.

El *OCC* desarrolla, entre otras, las funciones que en España llamaríamos de Servicio jurídico. Pues bien, la responsabilidad en materia de conflictos de intereses, incompatibilidades y otros estándares de ética pública de los empleados del *IRS* corresponde a un Departamento integrado en el *OCC*: la *Office Of Associate Chief Legal Counsel*, de quien depende el *Chief Of Ethics & General Government*. El Director de este Departamento, *General Legal Services Division*, es pues quien responde ante la *OGE* de todo lo relativo a la aplicación, seguimiento e incidencias de las políticas de ética pública en el seno del *IRS*, quien desempeña, en la Administración tributaria, el papel que, en la terminología de la *OGE*, esta encomendado al *Designated Agency Ethics Official (DAEO)*: el enlace que la Agencia de Ética tiene en cada una de las grandes unidades administrativas federales para que la actividad que al respecto se realiza en cada una de ellas se haga de forma coordinada y eficiente. En el Departamento del Tesoro, del que forma parte el *IRS*, esta función está asignada al *Deputy General Counsel*. En definitiva, a las divisiones jurídicas de cada organismo.

En el marco de la reforma operada en el *IRS* en 1998 se creó un Consejo de Supervisión (*Oversight Board*). Este Consejo está integrado por nueve miembros –uno de los cuales ha de representar a los empleados del *IRS*– que nombra el Presidente y confirma el Senado por un periodo de cinco años, siendo parte del mismo el Secretario del Tesoro y el Comisionado del *IRS*. Sus principales funciones son las de diseñar y hacer el seguimiento de las grandes líneas de actuación del *IRS*, supervisar y presentar para su aprobación el presupuesto de la Agencia y velar porque el contribuyente sea tratado de forma adecuada. Una de las políticas cuyo seguimiento y vigilancia específicamente se encomienda a este Consejo de Supervisión es, precisamente, la ética de los empleados y ex-empleados de la Agencia¹⁵.

Como se ha hecho notar, quienes trabajan para el *IRS* tienen la consideración de empleados públicos, siéndoles de aplicación las disposiciones generales que al respecto están en vigor para los mismos. Al mismo tiempo, la Agencia esta encuadrada en el ámbito de responsabilidad del Secretario del Tesoro. Por lo tanto les resultan, igualmente, de aplicación las disposiciones específicas que el Departamento del Tesoro ha promulgado para sus empleados:

- *Supplemental Standards of Ethical Conduct for Employees of the Treasury Department*¹⁶.
- *Treasury Rules of Conduct*¹⁷.

¹³ La historia del *IRS* discurre en paralelo a la de la tributación federal sobre la renta. No se puede perder de vista al respecto que los EEUU es un país de profunda tradición federal en el que cada competencia que le ha sido reconocida a la Unión ha nacido de considerables tensiones que han derivado, en muchos casos, en la aprobación de enmiendas constitucionales. Así ocurrió con el poder de establecer impuestos sobre la renta, que –aunque aparece en 1864, y con ello el primer precedente del *IRS*– no se estabiliza hasta 1913, merced a la 16 enmienda. Desde entonces el *IRS* ha ido creciendo a medida que lo hacía el sistema federal de tributación sobre la renta, *Income Federal Taxation*, y la normativa que lo regula *Internal Revenue Code* (en adelante *IRC*), que de 16 paginas ha llegado a contener mas de 6.000 en dos reestructuraciones de conjunto, en 1954 y 1986. Desde 2001 está en marcha una reducción secuencial y temporal de los impuestos sobre la renta –que incluye la suspensión de la tributación federal sobre las transmisiones hereditarias y gratuitas (*Estate and Gifts Taxes*)– con arreglo a la cual viene disminuyendo la presión fiscal federal sobre la renta hasta el 2010, año en el que –salvo que el Congreso considere lo contrario– se recuperaran los niveles del año 2000.

¹⁴ Cfr. *IRS Organization Blueprint*, en www.irs.org>IRS Modernization.

¹⁵ Cfr. al respecto la pagina *web* de este organismo: www.treas.gov/irsob/index.html.

¹⁶ (5 CFR Part 3101) Documento que contiene ciertas disposiciones específicas para empleados destinados en Servicios específicos dependientes del Tesoro, como Aduanas, inspección financiera, el propio *IRS*, o el de Tabaco, Alcohol y Armas de fuego.

¹⁷ (31 CFR Part 0) Este segundo, más sustancioso que el primero, se centra en algunas reglas particulares de conductas a observar en el desarrollo de la función pública en el Departamento del Tesoro en cuestiones como uso de vehículos, no discriminación o declaración de intereses.

Ya con carácter exclusivo la Agencia compendia los comportamientos que han de observar sus empleados (*employer/official*) y cargos (*officer*) en un documento –*IRS: Rules of Conduct (Documento 7098)*– de cuya entrega personal a cada persona que trabaja para el *IRS* queda constancia por escrito. Este documento administrativo –que sólo se ha podido encontrar como anexo de un libro editado en 1999, pues no aparece en las bases de datos de documentación administrativa– es un resumen de la normativa ética de los empleados públicos redactado en forma de contrato y elaborado con el objetivo de que el empleado no pueda alegar desconocimiento de la misma, que la lea detenidamente y que la tenga presente en su actividad diaria.

Incluso en el seno de la propia Agencia, de entre las disposiciones citadas algunas de ellas se refieren particularmente a quienes desarrollan tareas de inspección, de control aduanero o de investigación criminal. Señaladamente destacadas en este sentido son las reglas de conducta que conciernen a quienes trabajan en la *OCC* que, como se acaba de mencionar, es el Servicio jurídico del *IRS*, pues tienen mucho que ver con las pautas de responsabilidad profesional comunes a todos aquellos que llevan a cabo tareas de asesoramiento o defensa legal de personas públicas o privadas¹⁸: *Employee Conduct and Ethics*¹⁹. En el mismo repertorio normativo las disposiciones siguientes desarrollan la normativa ética en los aspectos procesales –competencia, tramitación, prueba.

También, como es lógico, y aunque no se pretende centrar la atención en ello, los empleados de la Administración tributaria han de tener presente en su actividad –en activo y cuando abandonan la Agencia– la normativa federal que establece disposiciones éticas –en algunos casos con consecuencias penales, que pueden llegar a los cinco años de prisión, en caso de incumplimiento– en el ámbito de lo que en España se encuadraría en el tráfico de influencias, el cohecho o las incompatibilidades relativas a quienes han ejercido un cargo o empleo en la Administración, una vez que la han abandonado²⁰.

Se ha de hacer referencia por último, para completar el marco general de la normativa aplicable a los comportamientos de los empleados del *IRS* en el ejercicio de su actividad, dos órdenes normativas que –si bien no son específicos de los empleados públicos– si les pueden resultar con mucha frecuencia de aplicación.

En un primer sentido, es preciso referirse a lo que se conoce como *Circular 230*²¹. A diferencia de lo que ocurre en España, el ejercicio de la asesoría fiscal en las relaciones con la Administración tributaria esta pormenorizadamente reglado en el texto referido. Un servicio específico en el *IRS*, el *Director of Practice* –elegido directamente por el Secretario del Tesoro, aunque trabaja, con independencia orgánica, en el *IRS*– es el responsable de todo lo que al respecto atañe, desde la gestión del registro de personas autorizadas para ejercer ante la Agencia, el *Centralized Authorization File*²², hasta la proposición de nuevas normas y la interpretación de las vigentes, pasando por todo lo

¹⁸ A diferencia de lo que ocurre en España, en todas y cada una de las Facultades de Derecho norteamericanas los principios generales que presiden la responsabilidad profesional de quien ha de aplicar el Derecho conforman una asignatura obligatoria de considerable trascendencia. La licenciatura en Derecho no habilita, por sí sola, para el ejercicio de la abogacía. Para formar parte de los colegios profesionales es necesario superar unas pruebas de habilitación y, una vez que se accede a la corporación, respetar unas pormenorizadas reglas de conducta de cuya interpretación y exigencia se ocupan los comités éticos colegiales.

¹⁹ Se trata más bien de un compendio de la doctrina administrativa que el *Chief of Legal Counsel* –el Jefe del Servicio jurídico del *IRS*– dicta para sus empleados, a partir de los documentos reglamentarios más arriba citados. Por eso aparece en el repertorio de doctrina administrativa tributaria –una especie de prontuario o *vademécum* administrativo– que se edita con la denominación de *Internal Revenue Manual* (IRM 30.4.8.5 y sigs.).

²⁰ Esta normativa se contiene en 18 USC § 203-216. *Cfr.*, en especial, 18 USC § 205 Actividades de oficiales y empleados en procesos y otras actividades relativas al Gobierno; y 18 USC § 207 Incompatibilidades relativas a oficiales, empleados y cargos de los poderes ejecutivo y legislativo.

²¹ *Circular 230. Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service* (31 CFR, Subtitle A, Part.10).

²² No es preciso estar registrado como ejerciente para llevar a cabo ciertas actuaciones, como presentar declaraciones, atender un procedimiento de verificación en nombre propio o de otro, testificar o informar sobre las relaciones profesionales con un tercero. Sí para entablar reclamaciones, firmar acuerdos o actuar como representante en un procedimiento de inspección. En cualquier caso, las normas de conducta que se exigen de los asesores registrados son, en buena medida, aplicables a quienes no lo están. El acceso al registro es automático para abogados, auditores colegiados, y personal que ha trabajado para el *IRS* –en ciertas funciones y continuidad– requiriéndose un examen previo para el resto. También es necesario cubrir unas exigencias mínimas de formación continuada (72 horas cada 3 años) para renovar la afiliación. El *Director of Practice* puede realizar amonestaciones privadas o promover procedimientos específicos para imponer sanciones civiles y hasta la suspensión de la autorización para ejercer, respecto de los asesores fiscales que violen las normas de comportamiento que les son propias, la *Circular 230*.



relativo al cumplimiento de la normativa referida, que incluye sanciones²³ y propuestas de suspensión. En tanto que representan a la Agencia en sus relaciones con el contribuyente, parte de estos estándares éticos que se exigen de los asesores fiscales, también les resultan de aplicación a los empleados del *IRS*, en particular por lo que se refiere al régimen de incompatibilidades que les es de aplicación al pasar al ejercicio privado. Por ejemplo, difícilmente se admitiría en el registro de asesores fiscales autorizados para ejercer ante el *IRS* a un ex-empleado de la Agencia que hubiera sido sancionado en el ejercicio de sus funciones públicas²⁴.

En un segundo orden de cosas, buena parte de los empleados de la Agencia son abogados y, como tales, les resulta de aplicación la detallada normativa deontológica de la *American Bar Association*²⁵, y –con carácter más específico– la de la *Federal Bar Association*²⁶, así como el código de conducta que rige la actividad de quienes ejercen en lo que es el principal foro judicial en asuntos tributarios, la *US Tax Court*²⁷. Por su parte, a los empleados del *IRS* que tengan la condición de auditores, también se les aplicarían los códigos de conducta que la asociación que les agrupa, el *American Institute of Certified Public Accountants*²⁸, exige de los mismos.

La fuerza coercitiva, vigencia y eficacia de cada uno de los numerosos textos mencionados es diversa. Por ejemplo, los códigos deontológicos de los colegios de abogados son de aplicación en tanto en cuanto hayan sido admitidos por los Tribunales superiores de cada Estado o de cada orden jurisdiccional en el que se está autorizado para ejercer. Bien es verdad que la mayor parte de los tribunales, incluida la *Tax Court*, aceptan como propio el Modelo de Código de la *ABA*, que también ha asumido la *Federal Bar Association* y el Director del Servicio jurídico del *IRS*²⁹. Como también es cierto que la abundante jurisprudencia y bibliografía que sobre cuestiones deontológicas puede encontrarse en la literatura jurídica americana evidencia que no se trata de una cuestión circunscrita al mundo ideal de las declaraciones de principios: se aplica, se discute, se dictan recomendaciones y se imponen sanciones. Cuando se trata de actuaciones litigiosas, en particular, los Tribunales –además de que el principio general de condena en costas rige en materia tributaria– pueden imponer multas y suspender en el ejercicio en casos de falta de diligencia, competencia o, en definitiva, vulneración de los códigos de conducta que en cada uno de ellos este en vigor³⁰. En todo caso, no es en su dimensión sancionadora –que ni siquiera en todos está presente³¹– en la que radica su virtualidad en términos de ordenación de las relaciones sociales. Se trata, en definitiva, de lo que se ha dado

²³ No siendo objeto de este estudio, es evidente que también del asesor fiscal se espera que en su actividad respete un código ético de conducta. El *IRC* (Sec. 6700) prevé al respecto sanciones específicas, por ejemplo, para quienes comercialicen, con conocimiento de causa y sin adherir a sus clientes, productos que en términos españoles llamaríamos de planificación fiscal (*Tax Shelters*) que hayan sido considerados abusivos por el *IRS*. En la actualidad la Agencia tiene abiertos varios expedientes relevantes al respecto relativos a importantes sociedades de asesoramiento fiscal, el más importante de los cuales ha causado tal alarma entre sus directivos que –temiendo un proceso judicial similar al que llevo a Arthur Andersen a su desaparición al hilo del caso *Enron* finalmente han aceptado un acuerdo, reconociendo la culpabilidad, por el que se comprometen a pagar una sanción de \$456 millones y a colaborar con el *IRS* en los procesos que se siguen contra los antiguos directivos de la firma, que comercializaron dichos productos –alguno de los cuales ya había llegado a otro acuerdo con la Agencia– y contra quienes los adquirieron: Cfr. “KPMG Tax Duo Tied To Shelters”, en *Wall Street Journal*, 10/08/2005; “Settlement Seen On Tax Shelters By Audit Firm”, en *The New York Times*, 26/08/05.

²⁴ “The Director of Practice may grant enrollment to an applicant who, by virtue of his or her past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in a conduct that would justify censure, suspension, or disbarment of a practitioner under the provisions of this part.” [*Circular 230*, §10.4 (b)].

²⁵ *Model Code of Professional Responsibility* (1969) y *Model Rules of Professional Conduct* (2004). Una edición de estas últimas puede encontrarse en la página web de la ABA (http://www.abanet.org/cpr/mrpc/mrpc_home.html). Para una información más detallada, se puede consultar una base de datos específica que –además del texto– incluye comentarios y referencias abundantes y cuyas siglas de identificación son ABA-MRPC (disponible en *Westlaw* y *Lexisnexis*).

²⁶ *FBA Ethics Committee, Model Rules of Professional Conduct for Federal Lawyers* (1990), ISBN 1-56986-079-3, y *Standards for Civility in Professional Conduct* (1998).

²⁷ *Tax Court Rules of Practice and Procedure* (<http://www.ustaxcourt.gov/notice.htm>). Estas reglas son algo más que un código de conducta –que también– pues, en definitiva, regulan el procedimiento a seguir ante la Corte: inicio, tramitación y finalización de los litigios tributarios de su competencia.

²⁸ *Code of Professional AICPA*, y *Statements on Responsibilities in Tax Practice*.

²⁹ Cfr. *IRM* 30.4.8.5.

³⁰ Cfr. *Rule 202 Tax Court Rules of Practice and Procedure*.

³¹ “The Federal Bar Association is not empowered to discipline members or enforce these Rules”. *Model Rules of Professional Conduct for Federal Lawyers*, Scope.

en llamar *soft law* que –en función del concepto mismo del Derecho que cada uno tenga– no falta quien ni tan siquiera le reconoce valor normativo³². Son códigos cuya principal eficacia radica en su capacidad de incidir sobre sus destinatarios en términos de persuasión, incentivo, disuasión o estímulo, más que en términos de coerción. Por eso se documenta la entrega de los mismos a cada documentado –acreditándose así su comunicación formal– o, incluso, se le obliga a firmar que lo conoce y acepta, comprometiéndose a familiarizarse con el mismo, como en el caso del Documento 7098 que compila las normas de conducta propias de los empleados del *IRS*³³.

En la resolución que se haya de dar a cada regla de conducta en cada caso concreto son relevantes, como fuente de interpretación, las opiniones que sobre las mismas se hayan ido vertiendo. Son así de cita frecuente las *Opinions* del Comité de deontología de la ABA, o –en el ámbito del *IRS*– del *Chief of Legal Counsel*, que –como se decía– dirige el Servicio jurídico de la Agencia. La trascendencia de estas Opiniones varía en razón del entorno en que se utilizan y de a qué efectos se manejan. Como se ha hecho notar, para el caso de los abogados –de quienes representan los intereses del *IRS*– son los Tribunales superiores de las jurisdicciones ante las que se actúa quienes deciden qué reglas de conducta se han de respetar en el ejercicio. Pues bien, no es infrecuente que dicten resoluciones específicas que excepcionan la aplicación de una determinada regla (*Rules*) en su jurisdicción –de entre las que componen el Código de la ABA– o incluso, que se separen del modo en el que la misma ha sido formalmente interpretada (*Opinions*) por un determinado Comité Ético de dicha asociación.

2. EL EMPLEADO EN ACTIVO

La lógica que ha presidido la exigencia de elevados estándares de ejemplaridad en su conducta respecto de quienes trabajan o han trabajado para las entidades públicas no es otra sino la de preservar la confianza que el ciudadano merece tener en las mismas³⁴. Es, en definitiva, el modo de preservar la autoridad moral de las Instituciones, y, en el caso específico de la Administración tributaria, de asentar los cimientos sobre los que se construye su función: el espontáneo cumplimiento de sus obligaciones tributarias por la generalidad de los contribuyentes³⁵.

Las bases que presiden una relación de confianza explican los contenidos de estos códigos de conducta. En un primer orden de ideas nos encontraríamos con lo que razonablemente se puede esperar del comportamiento de alguien que ejerce una función pública (epígrafe 2.1). La peculiar situación en la que se encuentra el empleado del *IRS* explica que merezca la pena detenerse en la consideración de una premisa que condiciona los comportamientos del mismo: a quién sirve, ¿al Gobierno, a la Agencia, al público, o a su superior jerárquico? (epígrafe 2.2). Un capítulo clásico en la materia es la regulación de los conflictos de intereses, personales, profesionales, financieros (epígrafe 2.3), pues no es sensato confiar en quien tiene intereses contrapuestos en el ejercicio de su función. Por último, una de las bases de toda relación que pretenda estar presidida por la confianza es la confidencialidad (epígrafe 2.3).

2.1. Comportamiento general

Competencia, lealtad, confidencialidad, integridad, objetividad, diligencia, cortesía, son adjetivos que se repiten a lo largo de los distintos códigos de conducta que presiden la actividad de

³² Cosa bien distinta, aunque no siempre las lindes serán nítidas, es que vulnerándose una norma de conducta de las muchas que se describen en estos textos se pueda llegar a incurrir –a semejanza de lo que en Derecho penal con los concursos de hechos o de normas– en una conducta delictiva como la malversación, el perjurio o el cohecho [GARCÍA MEXÍA (2001), pág. 71].

³³ Entre los innumerables formularios de la Administración tributaria americana existe uno, el 8556, cuya único objeto es documentar que quienes trabajan para el servicio jurídico del *IRS* han recibido, han aceptado y se comprometen a familiarizarse con su contenido, el Documento 7098, incorporándose el formulario –una vez firmado– al expediente personal del empleado.

³⁴ El “mandamiento” que cierra el decálogo de 1958 se ha convertido en una referencia frecuente en la materia: “Uphold these principles, ever conscious that public office is a public trust”. El ciudadano tiene derecho a confiar en quien se ocupa de sus asuntos y es evidente que no es posible confiar en quien no desempeña su quehacer de forma decorosa.

³⁵ “Public confidence in the integrity and dependability of the service is crucial to the accomplishment of the IRS mission. It can be instilled and maintained only if every contact with the public reflects high ethical standards and our commitment to perform our work conscientiously, courteously, and effectively.” (*IRS Rules of Conduct, Foreword*). “Achievement of these attitudes by all employees will build public esteem and make a major contribution to realizing maximum voluntary compliance. In this very serious sense, these Rules of Conduct are promulgated.” (*Ibidem*, cap. 1).

los empleados públicos americanos. Todo ello se suele condensar en una expresión de difícil traducción³⁶, *duty of fairness and justice*, pero que viene a condensar buena parte de lo que nuestra Constitución expresa en su art. 9.3.

Lo primero que la Administración, y el contribuyente, tiene derecho a esperar de sus empleados es lo que en España se venía exigiendo de la inspección: que “sin merma de su autoridad y del cumplimiento de sus deberes (actúe con) la más exquisita cortesía, guardando a los interesados y al público en general la mayor consideración”³⁷, y que desde 2003 recoge nuestra Ley General Tributaria como derecho de todo contribuyente: “Derecho a ser tratado con el debido respeto y consideración por el personal al servicio de la Administración tributaria” [art. 34.1.j)].

Para que tal cosa sea así, mas allá del voluntarismo y natural predisposición de cada uno de los empleados, es necesario una voluntad decidida en el plano institucional y una respuesta equivalente por parte del interlocutor habitual. Ya se ha hecho referencia a que en los EE.UU., del mismo modo que los empleados del *IRS* están vinculados por un código de conducta, los representantes de los contribuyentes tienen unas reglas equivalentes que informan la relación. Desde el punto de vista institucional, el documento que sintetiza los estándares de comportamiento de los empleados de la Agencia –y que está redactado en forma de lo que en Derecho laboral se suele llamar “contrato psicológico”³⁸– expresa en sus párrafos iniciales un compromiso de la Administración a dedicar al desarrollo de políticas de recursos humanos la misma atención que se presta a los programas de gestión tributaria. Se están pidiendo del empleado unos comportamientos en el modo de relacionarse con los contribuyentes que exigen, por una parte, unas reglas de juego comunes para ambas partes y, por otra, una formación, un aprendizaje, en su ejercicio. Si la fortaleza de estos códigos radica en su capacidad de suscitar adhesiones, la relevancia que los responsables de las Administraciones públicas otorguen a los mismos en el desarrollo de sus políticas de recursos humanos es un aspecto crítico en su eficacia. No es fácil, en este sentido, suscitar adhesión a las reglas de conducta que se consideran exigibles en una relación si tan sólo se requieren de una de las partes de la misma: la consideración y respeto ha de ser recíproca.

A) El debido respeto

Esta expresión, utilizada por la normativa española, puede muy bien sintetizar parte de lo que el Ordenamiento americano denomina *fairness* como regla general de comportamiento del empleado público. Actuar de forma respetuosa, cortes, civilizada, con las partes, los jueces o el personal al servicio de la justicia y velar porque los testigos o los representados se comporten de igual forma es parte esencial de los estándares de comportamiento que postula la Asociación de juristas al servicio de las Administraciones federales. Estos conceptos –*respect, fairness*– son expresión de toda una serie de conductas a tener en cuenta en el desarrollo de la función pública que se ejerce.

Entre las primeras que identifica el código de conducta del *IRS* está la de ser “razonable”, tan dispuesto a reconocer los derechos del contribuyente como se está para proteger los derechos del Gobierno³⁹. No es razonable, por ejemplo, –y es relativamente frecuente en la Administración tributaria española– transmitirle al contribuyente que tiene razón para, al mismo tiempo, decirle que “no se le puede dar” en fase de gestión y que, por lo tanto, lo que ha de hacer es recurrir para ver satisfecha su pretensión en vía administrativa o contenciosa. Sólo una malentendida *raison d’État* explica, por ejemplo, que en Derecho público español el Abogado del Estado tenga la obligación legal de agotar las vías de recurso, sin que pueda desistir, salvo con autorización expresa⁴⁰, cuando la jurisprudencia haga más que previsible, por no decir seguro, que el caso se ha de

³⁶ Tal vez una palabra expresiva de buena parte de lo que condensa el adjetivo *fairness*, en este ámbito, sea “probidad”, con resonancias clásicas en nuestro Derecho público, y que el Diccionario de la RAE equipara a “honradez”: rectitud de ánimo, integridad en el obrar.

³⁷ Art. 7.2 del Reglamento General de la inspección de los Tributos, de 25 de abril de 1986.

³⁸ “Employees are required to familiarize themselves with the contents of these Rules of Conduct and are obligated to abide by them.” (*IRS Rules of Conduct*, cap. 1).

³⁹ “...as ready to recognize the rights of the taxpayer as we are to protect the rights of the Government.” (*Ibidem*).

⁴⁰ Art. 7.º de la Ley núm. 52, de 27 de noviembre de 1997, de asistencia jurídica: “Sin perjuicio de lo dispuesto en leyes especiales, para que el Abogado del Estado pueda válidamente desistir de acciones o recursos, apartarse de querellas, o allanarse a las pretensiones de la parte contraria, precisará autorización expresa de la Dirección del Servicio Jurídico del Estado que deberá, previamente, en todo caso, recabar informe del Departamento, Organismo o entidad pública correspondiente”.

perder. Ambos comportamientos están muy lejos de lo razonable, de lo que debiera ser un modelo de relaciones en el que el contribuyente pudiera confiar, de buena fe procesal⁴¹.

Todo ello, y otras razones en las que no es posible aquí detenerse⁴², explica la desorbitada litigiosidad que aqueja al Derecho tributario español alimentada, en buena medida, por comportamientos de los empleados de la Agencia tributaria⁴³. Sería contradictorio reprocharles tales modos de actuar a dichos empleados cuando los propios responsables de su dirección alimentaban los mismos, y con ello la conflictividad que de tal forma de hacer se deriva, al incentivar, hasta fechas recientes, con complementos retributivos la práctica de liquidaciones provisionales fueran o no objeto de recurso, sin ligar consecuencia retributiva alguna a la firma de actos administrativos declarados nulos o ilegales por los tribunales.

También dice el código de conducta que el empleado ha de respetar la verdad⁴⁴. Y lo dice en un modo que merece la pena intentar traducir, por lo medido de la expresión: “El empleado no realizará intencionadamente declaraciones verbales o escritas falsas, o que induzcan a engaño, en materias de interés público”⁴⁵. Obligación que se extiende a todas sus relaciones, con compañeros y contribuyentes.

Al contribuyente no se le puede faltar al respeto, ni siquiera cuando es él quien no se comporta respetuosamente⁴⁶. De modo que, en el caso de que –por ejemplo– se reciba una propuesta de soborno, lo que las reglas de conducta de la Agencia disponen es que se interrumpa inmediatamente la relación con el cliente⁴⁷, se informe al oficial de la inspección de los servicios tan pronto como sea posible, y se evite tratar del tema sin necesidad con persona alguna⁴⁸.

B) Conducta

Con carácter general se exige de todos los empleados del Tesoro no dar razón de una conducta *criminal, dishonest, or notoriously disgraceful* que pueda resultar perjudicial para el Gobierno, y no llevar a cabo comportamientos discriminatorios⁴⁹.

En este mismo sentido, la Agencia incluye en su repertorio de reglas de conducta una serie de comportamientos que para la mentalidad española tienen una cierta resonancia catequética. Pues bien, este tipo de reglas el código del *IRS* las agrupa en tres bloques: profesionales, personales y relativas al patrimonio público⁵⁰. Es especialmente en esta materia en la que se refleja con claridad la impronta de la cultura americana en cuestiones como las armas de fuego, el consumo de alcohol,

⁴¹ “A Federal lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous.” *Model Rules of Professional Conduct for Federal Lawyers, Rule 3.1*.

⁴² *Vid.* al respecto FERREIRO LAPATZA, J.J. *ET AL.* (2005), *passim*.

⁴³ El Derecho público americano aborrece el litigio y fomenta la resolución de las controversias mediante el acuerdo de las partes [*vid.* ROZAS VALDÉS, J.A. (2004), *passim*]. Siendo así, una de las conductas que espera de los abogados federales es, precisamente, la de procurar la terminación convencional de los procedimientos en los que intervengan (*vid. Standards for Civility in Professional Conduct 1998*, § 12-13).

⁴⁴ Una de los comportamientos del abogado federal que se califican como mala praxis es, en un sistema judicial en el que el precedente es crucial, citar conscientemente hechos o autoridades de forma errónea (*Standards for Civility in Professional Conduct 1998*, § 27) o declarar en falso (*Model Rules of Professional Conduct for Federal Lawyers, Rule 4.1*).

⁴⁵ *Idem* § 214.5. En igual sentido *Treasury Rules of Conduct* § 0.208 especificando que esta regla afecta al trato con el público. También se hace una alusión expresa a la obligación de declarar la verdad en el curso de investigaciones llevadas a cabo en el marco de procedimientos disciplinarios relativos a la conducta de compañeros (*IRM 30.4.8.7.5.2*).

⁴⁶ “We will treat all participants in the legal process with respect.” *Standards for Civility in Professional Conduct 1998*, § 1.

⁴⁷ No es infrecuente que la documentación administrativa americana se refiera al interlocutor del empleado público como su “cliente”. Esta expresión hay que enmarcarla en una concepción de la actividad administrativa como una prestación de servicios parangonable a la que se lleva a cabo en una empresa de servicios. Como referente para hacer entender al empleado público que debe tratar al contribuyente con la gentileza que un comerciante acostumbra a dispensar a su clientela puede ser útil. En términos estrictos el parangón es, a la vez, pobre y excesivo. El ciudadano que contribuye no es un cliente de la Hacienda pública, es algo más, su copropietario. Pero, al mismo tiempo, si en la relación comercial se parte de la premisa de que el cliente siempre tiene razón, en la tributaria no cabe presumir ni tal cosa –*in dubio contra Fiscum*– ni su contrario –*in dubio pro Fiscum*–.

⁴⁸ *IRS Rules of Conduct*, § 214.4.

⁴⁹ *Treasury Rules of Conduct* § 0.213 y 0.214.

⁵⁰ Prácticamente todas ellas se contemplan en los § 215-217.



el juego, o los donativos, fenómenos sociales, todos ellos, que en España tienen una dimensión y percepción pública bien distinta.

En cuanto a las profesionales⁵¹, las relativas a su actividad publican, se les pide:

- Lealtad con la Agencia y respeto de las disposiciones en materia de huelga⁵².
- Profesionalidad ante el público y ante el Gobierno, siguiendo con prontitud las indicaciones de los superiores y comportándose con los compañeros de forma que no se genere discordia o disensión⁵³: “*Courteous, businesslike and diplomatic manner*”⁵⁴, “*professionalism, honesty, and fair play*”⁵⁵, “*respectful, and civil*”⁵⁶, son alguno de los “modales” que la Agencia espera de sus empleados, hacia el público, hacia sus compañeros y hacia sus superiores.
- Una exigencia elemental de profesionalidad es la diligencia y la competencia en el ámbito propio de responsabilidad⁵⁷.
- Puntualidad⁵⁸ en el trabajo que se encomienda, en los horarios y al volver del almuerzo y descansos, solicitando –siempre que sea posible– permiso para ausentarse cuando haya que desarrollar una tarea fuera de la oficina⁵⁹.
- Tan solo los agentes de investigación criminal están autorizados para llevar armas consigo o en el coche, en el ejercicio de sus funciones y, en cualquier caso, tienen prohibido exhibirlas públicamente de forma innecesaria.
- En cuanto a su apariencia, dicen las reglas que se arreglarán de forma adecuada al entorno en el que les corresponda trabajar⁶⁰.

⁵¹ Un buen resumen de lo que se considera profesionalidad en el ejercicio de la función pública lo facilita el código de conducta de los abogados federales: “In all professional functions a Federal lawyer should be competent, prompt, diligent, and honest”. *Model Rules of Professional Conduct for Federal Lawyers*, preámbulo.

⁵² “Employees shall not strike against the Government” *Treasury Rules of Conduct* §0.735-202.

⁵³ No es el caso, pero este párrafo, traducido del § 215.2, advierte sobre un factor que en términos de psicología de las organizaciones sociales tiene un considerable desarrollo e importancia. Cualquiera ha tenido experiencia de la notable influencia que tiene en el trabajo cotidiano el modo en el que quienes lo comparten se relacionan entre sí y con sus superiores. Las entidades privadas están muy acostumbradas a gestionar este aspecto de las organizaciones en sus Departamentos de Recursos Humanos. No ocurre lo mismo, al menos en términos generales, en las entidades públicas, en buena medida porque buena parte de estas cuestiones son de más que complicada gestión cuando sus destinatarios tienen con su empleador una relación funcionarial.

⁵⁴ *IRS Rules of Conduct*, § 211.

⁵⁵ *IRM* 30.4.8.7.1.

⁵⁶ *Standards for Civility in Professional Conduct 1998*, § 34.

⁵⁷ El código de los juristas al servicio de la Administración federal mencionan los deberes de competencia y diligencia –extrapolables al ejercicio de cualquier función pública o privada– entre las primeras reglas de conducta a respetar (*Model Rules of Professional Conduct for Federal Lawyers*, Rules 1.1 y 1.3).

⁵⁸ “We recognize that tardiness and neglect show disrespect to the court and the judicial system. Therefore, we will be puntual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time and proceed efficiently.” *Standards for Civility in Professional Conduct 1998*, § 31. Este párrafo extraído del código de conducta profesional de los abogados federales es perfectamente extrapolable a la actuación de cualquier profesional. No está de más advertir que no es sólo puntualidad lo que se espera de quien asiste a una reunión, sino que comparezca habiéndola preparado, de forma que se pueda desarrollar de forma eficiente.

⁵⁹ En una expresión muy propia del sentido retributivo que preside las relaciones sociales americanas el decálogo de 1958 exige del empleado público, en su punto tercero, “give a full day’s labor for a full day’s pay”, dedicando a su tarea sus mejores esfuerzos y capacidad intelectual. Se debería de esperar de quien desempeña una función pública la misma diligencia en su quehacer que se predica del buen padre de familia o del buen comerciante. Esta diligencia, en el caso del empleado público, incluye el conocimiento preciso de la normativa vigente en las cuestiones que le competen, la pericia precisa en su aplicación y la dedicación a los asuntos que se le encomienden, a su tramitación, del tiempo que requieran: ni más, por desidia, ni menos, por displicencia. Es un clásico en la literatura gerencial de empresas privadas identificar como una patología de la organización el tener empleados que sólo ponen a disposición de la entidad sus cuerpos –sus “horas de presencia”– pero no sus cabezas. No es una enfermedad, más bien al contrario, que no afecte a las entidades públicas y, desde luego, no es el menor de sus factores desencadenantes una insuficiente provisión de defensas éticas en los tejidos sanguíneos de la institución.

⁶⁰ El capítulo de apariencia externa –atuendo, en particular– forma parte del lenguaje, de la imagen, del empleado público y, por lo tanto, no es del todo irrelevante. No es fácil decir algo más que lo que –de forma comedida– propone esta regla, y, sin embargo, la cuestión –en ocasiones– puede traspasar el capítulo de la anécdota. En un empleado de la Administración tributa-

- Se prohíbe expresamente permitir a terceros la escucha o grabar conversaciones telefónicas sin permiso del interlocutor salvo, con las debidas cautelas procesales, en el caso de investigaciones criminales⁶¹.
- Los códigos de conducta de los abogados al servicio del Gobierno federal dedican varios apartados a cuestiones procesales como los plazos, haciendo notar que no es correcto –preservados los derechos de sus clientes– solicitar o denegar su ampliación sin causa justificada, no advertir con tiempo suficiente de la imposibilidad de evacuar un trámite en plazo, abusar del tiempo de los demás, forzar dilaciones gratuitas, o provocar conflictos de calendario con la otra parte⁶², así como al empleo de lo que se podría llamar estrategias procesales en materia de argumentación, prueba (documentos, testigos, confesiones, obtención...), medidas cautelares, etcétera⁶³.

De su actividad en el plano personal, se les exige:

- Ser responsables por el descrédito público que puede comportar su vinculación injustificada con personas de conducta delictiva o poco respetable.
- No consumir bebidas tóxicas en el trabajo, o de modo que afecte al normal desarrollo del mismo y ser responsables, por el descrédito que puede comportar, cuando se hace al margen de la actividad pública⁶⁴.
- No participar en juegos ilícitos, ni jugar en dependencias públicas o en tiempo de trabajo.
- Se prohíben los préstamos de dinero –aun esporádicos y de sumas irrelevantes– entre los empleados en activo.
- Se espera de los empleados que gestionen su patrimonio personal de forma no comprometedor para la Agencia y que cumplan con sus obligaciones financieras, legales y tributarias con puntualidad y corrección⁶⁵.
- Además de las restricciones que en cuanto a la actividad política de los empleados públicos establece la *Hatch Act*, el *IRS* prohíbe expresamente a sus empleados que luzcan en su trato con el público distintivos de afinidad política, estableciendo, en caso de incumplimiento, una suspensión inmediata por no menos de 30 días.
- Los empleados no podrán solicitar donativos de terceros para ninguna asociación o mutualidad de empleados, ni hacer colectas, ventas de artículos o distribución de literatura o publicidad en las dependencias del Gobierno, sin autorización expresa⁶⁶.

Por último, en cuanto al uso de los bienes públicos, se establece lo siguiente:

- Hacer uso de cualquier propiedad del Gobierno únicamente para usos oficiales, proteger y conservar aquellas de que dispongan, informar de cualquier daño que sufran y reintegrarlas una vez que concluyan su servicio⁶⁷.
- No hacer uso de los vehículos públicos, ni autorizar su préstamo a tercero, para funciones que no sean oficiales, ni transportar en el mismo a persona alguna por razones ajenas al servicio.

ria lo más procedente en cada caso, probablemente, es que su apariencia pase inadvertida, lo que será indicativo de que es adecuada a la circunstancia, como dice la regla del *IRS*.

⁶¹ *IRM* 30.4.8.9.

⁶² *Standards for Civility in Professional Conduct* 1998, § 8-11, 36-39. *Model Rules of Professional Conduct for Federal Lawyers*, Rule 3.2.

⁶³ *Model Rules of Professional Conduct for Federal Lawyers*, Rule 3.3-3.4, 4.4.

⁶⁴ *Treasury Rules of Conduct* § 0.204.

⁶⁵ El punto segundo del tan citado decálogo general de conducta reza así: "Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion".

⁶⁶ *Idem* § 0.211.

⁶⁷ En este sentido se prevén reglas específicas –separación de fondos y reembolso de depósitos– para los asesores jurídicos federales que llamados a manejar fondos de sus clientes o de terceros: "A Federal lawyer should hold property of others with the care required of a professional fiduciary" (*Model Rules of Professional Conduct for Federal Lawyers*, Rule 1.15. *Safekeeping Property*).



- Abstenerse de emplear el tiempo, el dinero o los bienes públicos para influir en los miembros del Congreso a favor o en contra de disposiciones legislativas⁶⁸.
- Utilizar los emblemas, carnets o distintivos de identificación únicamente para el ejercicio de las funciones públicas que tienen encomendadas y no para ejercer influencia u obtener, directa o indirectamente, privilegios, favores o recompensas.
- Preservar la privacidad de la información electrónica que manejan y no hacer uso de las instalaciones informáticas de que disponen para usos ajenos a la función pública que desempeñan.
- Cuidar de la documentación y datos oficiales de que hacen uso, sin acceder, alterar, sustraer, destruir o mutilar la misma sin la debida autorización⁶⁹.

2.2. Identificación del cliente

El primer problema ético que un empleado público debiera plantearse en el desarrollo de su actividad es el de identificar a quien sirve. Es fácil responder en sentido genérico: sirve al interés público. No es tan sencillo desentrañar el sentido de tan evanescente expresión cuando se desciende de la abstracción de los conceptos a la realidad del ejercicio diario de la función pública.

Lo primero que resulta extraño al jurista habituado al Derecho común europeo es el mero hecho de que el empleado administrativo pueda tener un cliente. No así para el americano, que concibe las relaciones administrativas como unas relaciones de servicio, tanto en relación al público, como al Departamento o Agencia para quien trabaja y no en términos de relaciones de poder. Claro está, ya se ha hecho notar, que en el plano tributario nunca se puede considerar al contribuyente como un cliente: es algo más, el copropietario de la Hacienda pública cuya administración se ha encomendado al Fisco.

En la doctrina tributaria española se ha identificado esta confrontación de intereses como la tensión que se produce entre el interés fiscal y el interés público⁷⁰. El primero vendría a ser el de la Administración, mientras que el segundo sería el del conjunto de los ciudadanos, como titulares últimos del Erario público. Un ejemplo bien sencillo puede venir a aclarar esta contraposición de intereses. En términos genéricos, la Administración tributaria puede no tener un interés particular en reducir el volumen de litigiosidad que su actividad genera. Particularmente si, como ocurre en España, el riesgo de condena en costas es despreciable y las garantías de pago que prevé el ordenamiento son más que suficientes. El interés fiscal, del Fisco como persona jurídica que administra los tributos, no resulta específicamente dañado por un volumen importante de litigiosidad pendiente. La cuestión analizada desde la perspectiva del interés público, del conjunto de los ciudadanos, es bien distinta. En un primer sentido, es obvio que la tutela judicial efectiva de los derechos de los contribuyentes resulta perjudicada cuando el volumen de asuntos que llegan a los tribunales es exorbitante. En otro sentido, una abundante litigiosidad comporta para el Erario público, como conjunto de derechos y obligaciones económicas de los ciudadanos, un coste que detrae recursos de otros programas de gasto lo que, en definitiva, perjudica el bienestar del común.

Es en este sentido en el que el empleado público se ha de preguntar si ha de perseguir preferentemente en su actividad el interés fiscal, el del Fisco para quien trabaja, o el interés público, el del conjunto de los ciudadanos de la comunidad política a la que sirve. Incluso dando por descontado que el empleado siempre ha de sacrificar los intereses públicos por los que ha de velar —la correcta aplicación de los tributos— en aras de sus intereses personales —una mayor retribución, un ascenso o más tiempo libre— esto no elimina los dilemas éticos que se le pueden plantear a la hora de identificar el interés público que ha de prevalecer en el ejercicio de su función. En los EE.UU., además, el problema adquiere una dimensión particular por cuanto la personalidad jurídica del Fisco como Erario público —el Departamento del Tesoro— y como entidad encargada de la administración de los ingresos —el IRS— está claramente separada. Se podría pensar que la situación en España es

⁶⁸ Sí pueden hacerlo, a título personal o colectivo, sin utilizar medios públicos o trabajando para un servicio al que se le requiera colaboración específica de forma y por canales oficiales (*idem* § 0.212).

⁶⁹ *Idem* § 0.205.

⁷⁰ Cfr. por todos, a este respecto, ROSEMBUJ T. (2000), *passim*.

semejante. Pero no es así. Aunque, ciertamente, se podría evolucionar en la misma dirección, hoy por hoy, no se puede decir que la AEAT sea plenamente independiente, estando presidida por el Secretario de Estado de Hacienda del Gobierno y formando parte la práctica integridad del personal a su servicio, de los cuerpos de funcionarios de la Administración General del Estado. De todos modos, o precisamente en el marco de los debates que al respecto se vienen manteniendo al hilo del sistema autonómico de administración de los tributos, esta cuestión ética puede llegar a tener un realce particular en nuestro ordenamiento. Es más, tal vez sea precisamente por ello por lo que, no casualmente, es éste uno de los aspectos críticos de las negociaciones que en torno al marco estatutario de Cataluña se vienen desarrollando entre las distintas fuerzas políticas. ¿A quién sirve el funcionario de la AEAT que gestiona tributos compartidos por el Estado y por las Comunidades Autónomas?: ¿al Presidente de la Agencia, al Ministro de Hacienda, al Consejero de Hacienda o al conjunto de los ciudadanos? ¿Qué interés se le mostrará preferente cuando en su función aprecie un conflicto entre los de alguno de los sujetos previamente identificados? De formularse tal pregunta a un inspector de Hacienda no es difícil aventurar que él sirve el interés “legal”, que actuará como la “ley” dice. Y, sin embargo, tal respuesta no deja de encubrir una falacia: las normas, por sí mismas, no dicen nada, hasta que quien las aplica no las obliga a expresarse en cada caso y, al hacerlo, en función de cómo se las haga hablar, pueden llegar a decir cosas bien distintas.

El funcionario del *IRS*, en definitiva, puede enfrentarse con conflictos éticos en el desarrollo de su actividad cuando aprecie una contraposición entre los intereses de distintas partes a las que sirve en el desarrollo de su función. En términos generales, un dilema semejante no es muy distinto del que se le puede plantear a cualquier ciudadano que en el desarrollo de su trabajo tiene conocimiento, por ejemplo, de un comportamiento de la persona para quien trabaja que se puede calificar como inmoral o, en los casos más graves, delictivo. Es más, sin llegar a traspasar el umbral de lo reprobable, el empleado público puede encontrarse en situaciones en las que es consciente de que, pudiendo optar por dos modos de hacer idénticamente aceptables, uno de los comportamientos beneficiaría a una de las partes por cuyos intereses tiene el compromiso de atender, redundando el otro en interés de otra parte, idénticamente digno de preservar. La situación de quien ejerce una función pública es, además, cualitativamente distinta de aquél a quien tal dilema se le presenta en el ejercicio de una actividad privada, desde el momento en que ha adquirido un compromiso concreto de velar por el respeto del Derecho. ¿Está obligado el empleado a denunciar a su empleador, el cliente para quien trabaja, cuando éste actúa contraviniendo el ordenamiento jurídico?.

Lo primero que es preciso dilucidar al respecto es para quién se ha de entender que trabaja el empleado u oficial del *IRS*. Pues bien, se viene considerando que su cliente es el *IRS*⁷¹, no el Departamento de la Agencia –Grandes empresas, Investigación criminal o Auditoría– en el que en concreto está destinado, ni el superior jerárquico directo para quien se está trabajando, ni el Gobierno federal, sino la Agencia tributaria. Es, pues, con la Institución, con la Agencia, con quien tiene un deber reforzado de lealtad. No con la persona de quien directamente depende, ni con el Departamento o la Delegación territorial en la que está destinado. Quien conoce las estructuras corporativas que, como en cualquier organización, se tejen en los organismos públicos está en condiciones de percibir que la cuestión sobrepasa lo anecdótico⁷².

Otra cosa es el modo de preservar los intereses de la Institución a la que se sirve que es, naturalmente, en consonancia con los principios de jerarquía y legalidad que rigen la actuación de todo empleado público. El que se deba lealtad a la Agencia tributaria no significa que tal deber haya de pasar por encima de cualquier otro⁷³. Es preciso, a este respecto, distinguir dos planos: el político y el jurídico. La forma en la que la normativa o la dirección política del organismo administrativo haya resuelto una determinada delimitación de competencias o el criterio a seguir, conforme a la normativa

⁷¹ Cfr., *Model Rules of Professional Conduct for Federal Lawyers*, Rule 1.13.

⁷² Un sencillo ejemplo –tomado de la realidad– puede contribuir a ilustrar el particular: siendo posible, y legal, cerrar un procedimiento de gestión tributaria de dos formas, una de ellas implicaba realizar un ingreso a cuenta importante en una Delegación territorial y que, más tarde, otra Delegación devolviera al contribuyente buena parte del exceso ingresado; la otra opción llevaba consigo un menor ingreso, sin necesidad de devolución, en la segunda demarcación territorial. Evidentemente la segunda posibilidad era menos gravosa para el contribuyente, al mismo tiempo que más sencilla en términos de tramitación: era la más interesante para el ciudadano y para la Hacienda pública en su conjunto. Pues bien, el funcionario en cuestión actuó preservando el interés particular de su Delegación territorial y cerró el procedimiento optando por la primera fórmula.

⁷³ “Put loyalty to the highest moral principles above loyalty to persons, party, or Government department” es el primer mandamiento del Código de 1958.



que rija tales cuestiones, al aplicar una norma sobrepasa el ámbito de decisión del empleado público. Es decir, la actuación del empleado, del inspector, del gerente, se ha de mover en el marco de discrecionalidad que se le ha marcado, sin que pueda desatender un concreto protocolo de actuación por considerar que es contrario a Derecho. Dicho esto, lo que no puede permitir el funcionario es que su superior jerárquico se entrometa, por ejemplo, en el modo de dirigir un asunto concreto, informar sobre un particular o fundamentar una resolución específica obligándole a actuar en contra de su leal saber y entender, en el ámbito de lo que a él le corresponde⁷⁴. Si, por ejemplo, es el inspector actuario quien ha de decidir el orden de las actuaciones, su superior no podría indicarle que lo alterase de forma arbitraria o que dedicara más tiempo a un asunto que, de acuerdo con el procedimiento seguido, corresponde cerrar.

Lo que ha de hacer el empleado en el caso de que tenga conocimiento de un comportamiento contrario a los estándares de conducta que rigen la actuación de los empleados del IRS, o que considerase ilegal, es, en primer lugar, advertirlo a quien lo está llevando y, en su caso, denunciarlo a través de la cadena de mando de la que forma parte, eso sí, sin participar activamente en el mismo. Sólo cuando lo haya hecho sin resultado apreciable podría revelar la información fuera de la Agencia, en el Departamento del Tesoro, la Oficina de Ética o el Fiscal General del Estado. Cuando, como se dice en una expresiva opinión del Comité de Ética de la ABA, tenga la conciencia de que las autoridades de quienes depende han vulnerado sus obligaciones con el interés público⁷⁵. En castellano de romance esta regla se resumiría en “los trapos sucios se lavan en casa”..., salvo que el responsable de la Institución a la que se sirve haya decidido no hacerlo, en cuyo caso habrá desmerecido la lealtad que hasta entonces le era debida.

Esta regla es útil tanto para comportamientos meramente irregulares como para los que pudieran tener carácter criminal⁷⁶. En el bien entendido de que, en este último caso, las circunstancias podrían aconsejar el dirigirse, directamente, a la Fiscalía.

El Derecho americano, naturalmente, tiene en cuenta la situación comprometida en la que queda el denunciante frente al compañero o, con mayor motivo, superior jerárquico al que ha denunciado. Y ha previsto al respecto que la denuncia (*wisthelblowing*) pueda ser anónima debiendo tramitarse directamente ante el *Chief Inspector* de la *Internal Security Division*⁷⁷. No es fácil en esta materia, sin embargo, la gestión de los dos riesgos que presentan este tipo de denuncias y es que, junto al ya señalado, de que el denunciante se vea represaliado, concurre el contrario que es el del empleado despechado que denuncia por revanchismo sin una base sólida⁷⁸. También se contempla expresamente una razonable excepción a la obligación de denuncia: no es preciso hacerlo, es más, no se ha de hacer, cuando se conoce la información comprometida como representante de un sospechoso de haber llevado a cabo alguna actividad sancionable, en el marco de un procedimiento disciplinario.

Un supuesto, bien peculiar, en el que puede llegar a entrar en conflicto el interés público con el interés fiscal es el que se le puede plantear a un letrado que defienda un asunto ante una Corte de justicia cuyas reglas de conducta difieran de las aprobadas por el *Chief Counsel*. En términos éticos el letrado se vería ante el dilema de preterir el modo de actuar que espera de él su cliente, el código de la Agencia, frente al comportamiento que le exige la jurisdicción pública ante la que ejerce su actividad, el código de la Corte. La solución que se ha venido dando a estas situaciones consiste en dar preeminencia a los protocolos de comportamiento de la jurisdicción específica ante la que se

⁷⁴ “...a Government lawyer shall not permit a nonlawyer to direct or regulate the Government lawyer’s professional judgment in rendering legal services”, dice una regla de conducta de los asesores jurídicos federales cuyo epígrafe es bien expresivo: (*Model Rules of Professional Conduct for Federal Lawyers, Rule 5.4. Professional Independence of a Federal Lawyer*).

⁷⁵ “When the lawyer, as a reasonable and prudent man, conscious of his professional obligation of care, concludes that these authorities have without good cause failed in the performance of their own obligation to take remedial measures required in the public interest”. *Opinion 73-1* del Comité de ética de la ABA.

⁷⁶ *IRS Rules of Conduct* § 214.3. *IRM* 30.4.8.7.1.

⁷⁷ *Treasury Rules of Conduct* § 0.107(a) (b). Con carácter general, la instrucción de los procedimientos disciplinarios en el IRS corresponde al *Treasury Inspector General for Tax Administration*, si se trata de actuaciones eventualmente punibles, ejerciéndose la acusación desde el Servicio jurídico de la Agencia, a partir de la información que en el mismo se haya podido recibir desde los distintos puestos directivos, o directamente por empleados, de la Administración; el Servicio jurídico de la Agencia, en sus dependencias centrales o periféricas en función de la gravedad del caso, es el responsable de tramitar los expedientes relativos a vulneraciones del código de conducta que no pudieran tener relevancia penal (*IRM* 30.4.8.7.1-4).

⁷⁸ *Cfr. GARCÍA MEXÍA* (2001), págs. 243 y sigs.

viene ejerciendo. En el bien entendido de que –de preterir aquellas el empleado– la OCC, lógicamente, sería coherente con sus propias reglas, siendo así que lo que no hará será abrir un expediente disciplinario al letrado por haber infringido unas normas de conducta, las de la Corte, que entran en contradicción con las dictadas por la Agencia⁷⁹.

Otro conflicto de carácter ético que se ha planteado en los EE.UU. a los abogados de Agencias públicas ha sido el del uso, en su defensa, de facultades reconocidas a los poderes públicos con finalidad bien distinta de la de defender sus intereses en procesos civiles. Pues bien, en términos generales se entiende que en la defensa de los intereses particulares de las Agencias no se puede hacer uso de facultades atribuidas por el ordenamiento para la protección del interés público. Es representativo de esta distinción un caso en el que una empresa demandó a una Agencia independiente por entender que determinados consultores habían facturado horas de trabajo para la empresa que, en realidad, habían dedicado a trabajar para la Agencia pública. Los abogados de la Agencia se dirigieron directamente a los consultores exigiéndoles, en cumplimiento del deber público de información, unas declaraciones que más tarde se utilizarían como prueba en el proceso civil. La empresa impugnó el modo en el que se había obtenido dicha prueba por infracción de una regla de conducta propia del ejercicio de la abogacía: el abogado de una de las partes no puede requerir información al cliente de la otra, sin contar con el consentimiento de su abogado. En el caso al que se hace referencia, la Agencia habría requerido información de los clientes de la contraparte –ejecutivos de la empresa– sin el permiso de los abogados que representaban a la misma. La Agencia hizo valer que estaba habilitada legalmente para requerir esa información de cualquier ciudadano –también los ejecutivos de la empresa demandante– pues tal facultad tenía amparo normativo. La Corte, finalmente, se decantó por reconocer que la Agencia había hecho un uso espurio de sus facultades de obtención de información –conferidas para la protección del interés público– aplicándolas a la protección de su interés específico con infracción de las normas de conducta que rigen las relaciones procesales entre abogados y clientes⁸⁰.

Este tipo de conflicto entre el interés general y el específico de la Agencia tributaria no es difícil de imaginar en el orden tributario. Precisamente porque el ordenamiento dota a la Administración tributaria de considerables facultades –con frecuencia exorbitantes– en aras de la defensa del interés público, no es menor la tentación de hacer uso de las mismas cuando lo que está en juego son, sencillamente, los intereses específicos de la Agencia. Por ejemplo, a la hora de fallar un concurso de obra o servicio, ¿podría la Agencia recabar de un tercero información financiera sobre uno de los concursantes en virtud del deber de información que, con finalidad tributaria, establece al respecto el art. 95 LGT? Se ha de entender que no, pues incurriría en un caso de desviación de poder.

2.3. Conflictos de intereses

Uno de los capítulos más densos de los códigos de conducta que rigen la actividad de los empleados públicos es el relativo a los conflictos de intereses que en el ejercicio de su función se les puedan plantear. Si no con esta denominación, “conflicto de intereses” –que sólo muy recientemente ha venido a incorporarse a nuestro ordenamiento, el Derecho administrativo español, como el mercantil, no son del todo ajenos a las cuestiones que subyacen bajo dicha expresión. Si el ordenamiento americano se ocupa de establecer reglas precisas sobre la contraposición que puede surgir entre los intereses personales, financieros o profesionales de un empleado público y los que tiene encomendado preservar en el ejercicio de su función es, justamente, porque se pretende conseguir que ningún interés distinto del de la comunidad política a la que se sirve condicione la actividad del gestor público.

Exactamente esto es lo que se exige de la Administración en nuestra Carta Magna cuando se proclama que actuará con “objetividad e imparcialidad” quedando proscrita la “arbitrariedad” (art. 9.3 Ce). En la legislación ordinaria son expresión del mismo principio las disposiciones que regulan las reglas de abstención o recusación del empleado público, como las que establecen obligaciones específicas de declaración de intereses o de incompatibilidades.

⁷⁹ Cfr. IRM 30.4.8.5.2.a.

⁸⁰ Cfr. *McDonnell Douglas Corp. v. United States ex. rel. O’Keefe*, 132 F.3d 1252 (8th Cir. 1998). Con carácter general un abogado no se puede dirigir directamente a un tercero representado por otro abogado, en relación al asunto del que se trate, sin permiso de este último (*Model Rules of Professional Conduct for Federal Lawyers, Rule 4.2*).



Es evidente que quien está llamado a tomar una decisión –del tipo que sea– desde la defensa del interés público no puede estar significativamente condicionado en su adopción por otros intereses distintos de aquél. Como es claro que el ordenamiento general o los códigos específicos de conducta tan solo pueden abarcar la regulación de las situaciones más comprometidas, estableciendo protocolos y precauciones encaminadas a su prevención.

Si, ciertamente, esta materia tiene una cierta presencia en nuestra normativa, la dimensión que tiene en el ordenamiento –y lo que es más importante– en el día a día de la vida pública americana no es ni de lejos comparable a la que tiene en nuestra sociedad. No es casual que la lengua inglesa utilice para designar una de las manifestaciones más evidentes de conflicto de intereses –el que media entre los familiares y los públicos– un término tomado de la cultura latina: *nepotism*. La sanción jurídica, y no digamos la social, que en las culturas anglosajonas tiene la interferencia de intereses en el ejercicio de funciones públicas está lejos de la que a situaciones equivalentes reservan las culturas latinas.

Es en este sentido en el que la sociedad americana, en la que las formas tienen una dimensión más trascendente que en la nuestra, se preocupa no ya de preservar la integridad del empleado público, sino la mera apariencia de imparcialidad⁸¹. Se entiende que el ciudadano tiene derecho, no ya a la objetividad en el actuar público, sino a que la presencia en el entorno de quien decide de otros intereses no permita ni siquiera sospechar que puede estar en peligro su imparcialidad⁸². No se busca tanto sancionar o resolver la conducta contraria al ordenamiento, como prevenir y evitar la sola posibilidad de que llegue a existir el temido conflicto. En definitiva, el bien jurídico protegido no es otro sino la confianza del ciudadano en las instituciones públicas; el derecho a pensar que se gestionan desde la óptica del bien común, y no desde la satisfacción de los particulares intereses –propios o de terceros– que quienes en las mismas trabajan pudieran albergar.

Aplicado este principio en el orden tributario, se puede decir que el empleado no puede tener intereses personales o de terceros que entren en contradicción con los de la Agencia para la que trabaja. De lo contrario, su independencia y objetividad estarían en entredicho, tanto frente a la Agencia como ante el ciudadano. El contribuyente tiene derecho a confiar en que en la gestión de los tributos los únicos intereses a los que se sirve son a los del común, no a intereses particulares que los empleados pudieran tener en una determinada resolución de los procedimientos tributarios. De modo que el empleado del *IRS* a quien se le asigne una tarea, responsabilidad o caso que pueda generar un conflicto de intereses *real or apparent* ha de informar inmediatamente a su inmediato supervisor al recibir el encargo o mientras se desarrolla, si la situación surge en el transcurso del procedimiento⁸³.

Ya se ha hecho referencia en el epígrafe anterior a un primer conflicto que en este sentido cabe plantearse y que no es otro sino el que media entre los intereses públicos y los propios de la Administración tributaria. También se ha hecho notar que, en línea de principio, el ordenamiento americano acepta como premisa general que –con las excepciones que sean precisas– los intereses de la Agencia coinciden con los de la ciudadanía a la que sirve. Si este punto de partida es útil para aproximarse a la resolución de los conflictos que en cuanto a la identificación del cliente a quien sirve pueda tener el empleado de la Administración tributaria, ha de ser también útil para considerar que –y no es gratuito insistir, sin perjuicio de eventuales excepciones de la regla– el ciudadano tiene derecho a pensar que no ha de mediar conflicto de intereses entre lo público y lo propio de la Agencia tributaria.

2.2.1. Intereses personales

Un primer orden de intereses que pueden enturbiar la imparcialidad del empleado público en el ejercicio de sus funciones es el relativo a lo que podríamos llamar intereses personales.

Ni que decir tiene que el empleado del *IRS* no puede participar en modo alguno en la tramitación o resolución de procedimientos en los que sea parte interesada su cónyuge, hijos o pa-

⁸¹ “Not only must we act with complete propriety, but we must be sure that none of our actions can be interpreted otherwise.” (*IRS Rules of Conduct*, cap. 1).

⁸² En el caso de los abogados federales, por ejemplo, han de evitar toda comunicación extraoficial –personal, telefónica o escrita– con los jueces o con el personal judicial sobre asuntos pendientes (*Standards for Civility in Professional Conduct 1998*, § 33; *Model Rules of Professional Conduct for Federal Lawyers*, Rule 3.5).

⁸³ *IRS Rules of Conduct* § 232.

rientes. Enturbiaría igualmente su apariencia de independencia el que recomendará al contribuyente los servicios profesionales de un determinado abogado o asesor contable⁸⁴, o que compartiera con el mismo o con sus representantes intereses que pudieran influir, o haber influido, en la actividad del empleado público⁸⁵. Contravendría las reglas americanas relativas a conflictos de intereses, por ejemplo, el que un inspector comprase una casa de una inmobiliaria en cuyo procedimiento de comprobación ha participado.

En esta misma línea se mueve toda la normativa ética que condiciona la recepción por el empleado público –ni que decir tiene de quien desempeña un cargo público relevante⁸⁶– de liberalidades, cortesías, atenciones y regalos⁸⁷. La normativa específica del *IRS*, en desarrollo de la común a todos los empleados públicos, y que distingue entre las recibidas de otros empleados, de Gobiernos extranjeros y de terceros en general⁸⁸.

El empleado público se ha de abstener de solicitar o recibir cualquier cortesía, gratuidad, favor, préstamo, entretenimiento o descuento –salvo los ofrecidos al público con carácter general– de cualquier persona interesada en contratar con el Departamento del Tesoro, que gestione actividades reguladas por el mismo o cuyos intereses puedan verse afectados por el modo en el que el empleado lleva a cabo su función pública. El propio código hace una breve relación de excepciones, como ciertas comidas de trabajo, o material de oficina de carácter promocional, que cierra con un llamamiento al sentido común del empleado para discernir en cada caso lo que sea razonable aceptar o no.

Respecto de los compañeros se especifica que no se solicitaran ni aceptaran atenciones para con los superiores, salvo en casos particulares como matrimonio, enfermedad o jubilación. En cuanto a los Gobiernos extranjeros, la normativa americana prohíbe recibir de los mismos emolumentos, donativos o distinciones, salvo por un importe irrelevante (\$225 actualmente), siendo así que cualquier atención que se reciba de los mismos se ha de aceptar en nombre de los EE.UU. haciéndola llegar a la Agencia en plazo no superior a 60 días⁸⁹.

2.2.2. Intereses profesionales

Mas allá de la mera participación como conferenciante o profesor en una actividad de tipo académico o social, un capítulo al que la normativa ética americana dedica una especial atención es a todo lo relativo a los conflictos que se pueden plantear entre la actividad del empleado público en el ejercicio de sus funciones y el de otros intereses profesionales, previos, simultáneos o posteriores, que éste pudiera tener.

Las características del mercado de trabajo, el tipo de vinculación que rige el ejercicio de funciones públicas y la mentalidad propia del ciudadano estadounidense contribuyen a que en la sociedad americana sea frecuente no tanto abandonar el ejercicio de la función pública –lo que sí es habitual en España– sino llegar al mismo tras años de haber ejercido en el sector privado o, ambas cosas al mismo tiempo: trabajar en distintos periodos, para distintas entidades públicas y privadas.

⁸⁴ *Standards of Ethical Conduct of the Treasury* § 3101.106(a) *Prohibited recommendations*.

⁸⁵ *Idem* § 235.1.

⁸⁶ El actual Gobernador de Ohio, Bob Taft, hijo de senador y nieto del Presidente William H. Taft, ha arruinado su carrera política –y corre el riesgo de ser sancionado con penas económicas y hasta de cinco años de cárcel– por no declarar 52 donativos que, en conjunto, se estiman en torno a los \$6000. Estas “cortesías” las vino recibiendo desde 1998 de distintos correligionarios –principalmente de uno, Mr. Noe, envuelto en una más amplia investigación por cohecho y malversación en la que han salido a la luz los hechos que ahora se imputan al Gobernador– en forma de, por ejemplo, comidas y pases de golf, en el marco de una normativa ética de declaración de intereses que obliga a dar cuenta de cualquier donativo cuyo importe supere los \$75 (cfr. “Governor of Ohio Is Charged With Breaking Ethics Law”, en *The New York Times*, 18/08/2005).

⁸⁷ En el mismo periódico, poco más de una semana después, se daba extensa referencia de otro caso. El responsable de la Entidad metropolitana del Transporte en Nueva York se enfrentaba a un proceso en el que se proponía la imposición de una sanción de \$1200 por haber recibido atenciones, en cuantía no superior a \$600, en forma, nuevamente, de comidas, pases para jugar al golf y entradas para el circo, por parte de contratistas de la entidad. En el cuerpo de la noticia se da cuenta de otros casos relativos a empleados del mismo organismo que habían llevado al mismo a adoptar un código de conducta, de 44 páginas, para sus empleados en el que se establecía una “política de tolerancia cero” respecto de los empleados que recibirían regalos de compañías que tuvieran intereses comerciales con la entidad (“Transit Leader To Pay Fine In Ethics Case” en *The New York Times*, 27/08/05).

⁸⁸ *IRS Rules of Conduct* § 234.

⁸⁹ *Treasury Rules of Conduct* § 0.203.



Tan es así que la normativa ética que rige los comportamientos que se han de respetar en el caso de que se den estas idas y venidas de lo público a lo privado recibe un nombre bien expresivo: *revolving door*, puerta giratoria.

En el epígrafe siguiente nos referiremos a los comportamientos que se esperan del empleado público que podríamos llamar “en excedencia”, una vez que abandona, total o significativamente, su actividad en el sector público, tratando a continuación lo que atañe al empleado público mientras esta trabajando para la Administración.

Un primer orden de conflictos de intereses que en este sentido se le pueden plantear al empleado público es el relativo a aquellas cuestiones en las que hubiera intervenido desde el sector privado, siendo así que se ve en la situación de intervenir en las mismas desde el ejercicio de una función pública. Como se ha hecho notar, el hecho de que no sea tan frecuente en España acceder al ejercicio de responsabilidades o empleos públicos desde la actividad privada hace que no se preste a este particular conflicto la atención que merece para el ordenamiento americano.

En la regulación de esta materia el Derecho americano es consciente de la tensión que media entre dos intereses públicos contrapuestos: por una parte el de reclutar buenos profesionales que pongan su buen hacer al servicio de la Administración y, por otra, evitar la apariencia de que su actividad en el sector privado, previa o posterior, pudiera comprometer su independencia de criterio⁹⁰. Este equilibrio se trata de salvar a través de dos calificativos: el empleado del *IRS* que viene de trabajar en el sector privado, se ha de abstener de intervenir en asuntos en los que hubiera estado implicado “personal” y “sustancialmente”⁹¹ cuando no trabajaba para la Agencia.

Un segundo plano es el desarrollo de otras actividades y empleos distintos de la función pública que se tiene encomendada. En este sentido la normativa americana es considerablemente más restrictiva que la española. Nuestro Derecho afronta el particular desde la perspectiva de proscribir las actividades que puedan comprometer la dedicación del empleado a las funciones públicas que tiene asignadas, o que entren en contradicción directa con las mismas, lo que se conoce como “incompatibilidades”. El Derecho americano, aunque sienta un principio general de compatibilidad para realizar actividades profesionales fuera del horario de trabajo, lo cierto es que establece muchas restricciones y sienta un principio general de solicitud de permiso escrito, incluso para actividades no retribuidas. En realidad lo aborda desde un punto de vista distinto al que se hace en Derecho español: el de evitar y prevenir el establecimiento de vínculos, colaboraciones o relaciones prestacionales con terceros que pudieran llevar a pensar que el empleado público puede verse inclinado a corresponder a aquellos mediante una contraprestación en especie, haciendo uso de su condición en beneficio del tercero.

Esta filosofía se expresa con toda claridad al enunciar los principios que ha de tener en cuenta el empleado del *IRS* que realiza otra actividad y entre los que –además de evitar que interfiera su horario de trabajo– se dice expresamente que no se puede dar la apariencia de que se trabaja para la Agencia con el objetivo de acceder así a ciertos negocios, se exige que no comporte un uso impropio de la información oficial de que se dispone, o se advierte al empleado de que no puede hacer indirectamente –por familiar interpuesto– lo que a él esta vedado realizar⁹².

En un primer orden de cosas hay determinadas actividades directamente prohibidas para el empleado de la Agencia, que son todas aquellas que puedan comportar un real “o aparente” conflicto de intereses⁹³:

- Cualquier empleo o servicio jurídico en materia en la que sean parte los EEUU.
- Salvo permiso escrito del Comisionado del *IRS*, se proscribire la mera apariencia de actuar en nombre de contribuyente o representante de éste en materias tributarias.
- Asesoramiento contable o llevanza de contabilidad en cuestiones con repercusión tributaria.
- Preparación de declaraciones tributarias.

⁹⁰ Cfr. GARCÍA MEXÍA (2001), págs. 170 y sigs.

⁹¹ *IRM* 30.4.8.10.

⁹² *IRS Rules of Conduct*, § 223.

⁹³ *Idem* § 224 y *Standards of Ethical Conduct of the Treasury* § 3101.106(b).

Para otro tipo de actividades se requiere permiso escrito y que no impliquen conflicto real o aparente de intereses⁹⁴:

- Conferencias o publicaciones, siendo preciso permiso previo si el autor se va a identificar como empleado del *IRS*, y estando prohibido recibir compensación alguna por dichas actividades, salvo las que sean razonables por razón de desplazamiento, alojamiento y manutención, si se participa en las mismas por razón del cargo o función que se desempeña⁹⁵.
- Asesoramiento jurídico, siempre que no se discutan los intereses de los EEUU, no se traten, ni remotamente, cuestiones tributarias y no se esté integrado en un bufete.
- Asesoramiento o llevanza de contabilidad, siempre que no se traten los aspectos tributarios⁹⁶, aun cuando se puede obtener permiso para negocios familiares siempre que las tareas que el empleado tiene asignadas no hagan previsible un eventual conflicto de intereses.
- Apuestas benéficas, que no casinos o casas de juego.
- Asesoramiento o intermediación financiera, en tanto en cuanto directa o indirectamente no se traten cuestiones tributarias.
- Actividades políticas que no entren en contradicción con lo establecido en la normativa específica que regula el particular (*Hatch Acts*).
- Enseñanza a tiempo parcial de materias tributarias en instituciones académicas o profesionales de prestigio.

Por último el código dice que para actividades que no sean empleo o negocio no se necesita permiso escrito, dando a continuación algunos ejemplos, desde la consideración de que, con carácter general, no se recibe retribución por las mismas:

- Funciones de gobierno en entidades no lucrativas, siempre que no se lleven a cabo actividades empresariales.
- Responsabilidades en sindicatos federales, salvo que se ostenten ciertos cargos⁹⁷.
- Participación en cooperativas de crédito o actuar como notario público.
- Asesoramiento o llevanza de contabilidad, y gestión o asistencia tributaria en entidades sin ánimo de lucro.
- Intermediación comercial eventual entre ventas o alquileres entre particulares.
- Servicios menores entre vecinos y familiares.
- Gestión de emergencia (hasta 30 días) de negocios familiares, por fallecimiento del titular.
- Colectas para causas filantrópicas que no entren en contradicción con los intereses del gobierno.
- Asistencia tributaria gratuita.

⁹⁴ *Idem* § 225.

⁹⁵ “Mediante su sentencia *US et al. v. National Treasury Employees Union et al.* el Tribunal Supremo de los EE.UU. zanjaba la cuestión indicando que la normativa sobre prohibición de percepción de honorarios, dada su lesividad de la libertad de expresión garantizada por la Primera Enmienda, sólo debía aplicarse a los altos cargos del poder ejecutivo, a los miembros del Congreso y a los del poder judicial (...) ya que, por su mayor importancia, únicamente parece proporcionado limitar por esta vía los conflictos de intereses en que aquéllos pudieran incurrir.” [GARCÍA MEXÍA (2001), pág. 160].

⁹⁶ A diferencia de lo que ocurre en España, en el sistema americano la contabilidad mercantil está nítidamente separada de la fiscal, de modo que lo normal es la llevanza simultánea de ambas. El Código tributario, *Internal Revenue Code*, regula exhaustivamente la composición de la base imponible –ingresos, gastos y deducciones– de los impuestos que gravan la renta de las personas físicas y jurídicas, sin partir del resultado contable mercantil para realizar ajustes fiscales, como ocurre en nuestro ordenamiento.

⁹⁷ No tiene sentido, sería impensable en un entorno americano, que un Delegado adjunto, por ejemplo, ejerciera funciones sindicales en el órgano de la AEAT a través del que se articule la representación de los empleados en las decisiones relativas a cuestiones laborales.



- Tutorazgo o albaceazgo, siempre que no implique la gestión de un negocio y que no se especifique que parte de la compensación que se reciba es en pago por la preparación de las declaraciones tributarias.

Otro ámbito en el que se puede evidenciar un conflicto de intereses es el procesal. Como ocurre en el ordenamiento español, aunque con más detenimiento, el Derecho americano prohíbe con carácter general al empleado del IRS participar en procesos judiciales contra los EE.UU. No ya es que –en las condiciones ya referidas– se condicione su ejercicio como asesor jurídico, abogado o procurador con carácter habitual. Es que no puede ejercer ni participar a título personal ni en representación de tercero en demanda alguna que se interponga contra el Gobierno de la Unión. Ciertamente, la regla tiene lógicas excepciones –sí puede hacerlo para defender sus legítimos y personales o familiares intereses directos– y tiene sus limitaciones para quienes se denominan. En el mismo sentido quien presta servicios de asesoramiento jurídico a una Agencia federal debe estar atento, como cualquier abogado, a no incurrir en conflictos de intereses derivados de la asunción de expedientes de distintos clientes –incluso dentro de la propia Administración federal– con pretensiones encontradas⁹⁸.

2.2.3. Intereses patrimoniales

El interés general cuya custodia se encomienda al empleado público puede entrar en conflicto con los particulares intereses financieros que el mismo, o sus familiares, tengan en una determinada actividad.

Por ejemplo, la objetividad de un inspector a quien se encomendara la investigación de una sociedad de la que es accionista podría estar en entredicho. En este sentido el Derecho americano establece una regla transparente: su imparcialidad se entiende a salvo siempre y cuando el volumen de los títulos, sumado al que posean su esposa e hijos, no tenga un valor de mercado superior a \$5000, o que no supongan más del 1% de la propiedad⁹⁹, sin que ello exima, en cualquier caso, de declarar a sus superiores tales intereses¹⁰⁰. Y, eso sí, siempre y cuando no este negociando un eventual empleo con la firma objeto de comprobación o con los abogados de la misma¹⁰¹. Estas disposiciones relativas a intereses patrimoniales es frecuente que tengan carácter específico, atendiendo al ámbito de responsabilidad de cada empleado público. Por ejemplo, a quienes trabajan como científicos en los Institutos nacionales de salud se les aplica una normativa ética particular, en lo que se refiere a intereses profesionales o financieros –no pueden tener una participación accionarial superior a \$5000– en empresas farmacéuticas¹⁰². En el ámbito tributario, en el mismo sentido, se prohíbe a quienes trabajan en el servicio jurídico de la Agencia trabajar en cuestiones que pudieran tener un “directo y predecible efecto” sobre sus intereses financieros de una “categoría diferenciada e identificable”¹⁰³.

También podría llevar a pensar que el empleado ha utilizado su información o condición privilegiada para mejorar su situación patrimonial el que participase en un procedimiento de enajenación de bienes públicos, de modo que tiene prohibido hacerlo, directa o indirectamente, salvo que se identifique como empleado del Gobierno en el procedimiento y siga las reglas que al efecto rigen¹⁰⁴. Evidentemente, puede adquirir los títulos públicos negociados en el mercado y pue-

⁹⁸ *Model Rules of Professional Conduct for Federal Lawyers, Rule 1.7. Conflict of Interest: General Rule.*

⁹⁹ *Cfr. IRM 30.4.8.6.4.b. y c.*

¹⁰⁰ Con carácter general la *Ethics in Government Act* de 1978 regula el procedimiento y circunstancias en las que los empleados públicos vienen obligados a presentar una declaración de intereses financieros o profesionales. La normativa de la OGE desarrolla esta obligación y, en el ámbito de la Administración tributaria, se prevén algunas disposiciones particulares al respecto (*IRM 30.4.8.12-13*).

¹⁰¹ La normativa ética de la Administración tributaria se refiere expresamente a las cautelas que se han de tomar, cuando se está negociando con un tercero un contrato de trabajo, para evitar la existencia o apariencia de conflicto de intereses (*IRM 30.4.8.14*).

¹⁰² “Ban on Scientists’ Consulting”, en *The New York Times*, 26/08/05.

¹⁰³ A título de ejemplo, se dice en el código de conducta de estos empleados que no podrían tener participaciones de una de las tres compañías petrolíferas a las que afectase el expediente con el que trabajasen, pero sí ser accionistas de un entidad entre las muchas que se vieran afectadas por un procedimiento con incidencia en un dilatado sector empresarial (*IRM 30.4.8.6.d.*).

¹⁰⁴ *IRS Rules of Conduct* § 233.

de obtener un permiso específico de dispensa (*waiver*) siempre que esté garantizado que no puede haber duda alguna sobre la ausencia de conflicto de intereses¹⁰⁵. En definitiva, lo que se trata de evitar es, por ejemplo, que los empleados de la Agencia tributaria aprovechen la información privilegiada que como tales pueden tener en subastas de bienes embargados en interés propio o de terceros allegados¹⁰⁶.

2.3. Deber de confidencialidad

Una de las dimensiones que tiene el deber de confidencialidad es respecto al contribuyente cuya información se conoce en el transcurso de un procedimiento tributario; Lo que en el Derecho tributario español se suele denominar como deber general de sigilo, recogido en el art. 95.3 LGT. En nuestro Ordenamiento se dispone que la infracción del mismo siempre se considerará falta disciplinaria muy grave, estando prevista la posibilidad de que se promueva un procedimiento civil o penal adicional. En Derecho americano es la propia ley tributaria la que contempla la conducta como delictiva, previendo sanciones que pueden llegar a penas de cinco años y la expulsión de la Agencia¹⁰⁷.

Una segunda dimensión, que tiene su razón de ser –como más arriba se expresaba– en la relativa facilidad con la que en los EE.UU. se puede acceder a la función pública tributaria desde el ejercicio de la asesoría fiscal, es el deber de confidencialidad que el empleado público tiene respecto de terceros, en relación con las cuestiones de las que hubiera conocido con ocasión de trabajo previo desarrollado para sus anteriores clientes.

La normativa ética matizaba el alcance de las limitaciones que condicionan al empleado público, en aras de preservar el interés general en reclutar profesionales de valía. Siendo así que el deber de abstención se restringía a las materias en las que, desde el sector privado, se hubiera intervenido “personal” y “sustancialmente”. En términos de confidencialidad, sin embargo, la trascendencia que tiene la confianza al objeto de preservar la fiabilidad del ejercicio profesional entre particulares exige que el empleado público que hubiera tenido conocimiento de una información como consecuencia de una relación profesional previa a su incorporación al *IRS* no pueda hacer uso de la misma en el ejercicio de su función pública, ni en beneficio ni en contra de los intereses de la Agencia.

En el mismo sentido, preservar la confidencialidad en las cuestiones conocidas en el ejercicio de la función pública, y en virtud de la especial relación de dependencia que le vincula con la Agencia el empleado del *IRS* no puede prestar testimonio o aportar documentos en materias relativas al desempeño de sus funciones ante ninguna persona, funcionario o tribunal, estatal o local, sin expresa autorización del *DAEO*, el responsable de todas las cuestiones éticas concernientes a la Agencia¹⁰⁸.

Evidentemente, toda la normativa ética relativa a la confidencialidad tiene una dimensión especial por lo que se refiere a quienes desempeñan tareas de asesoramiento jurídico para Agencias federales en lo atinente a la ordenación del secreto profesional que presiden estas relaciones que en

¹⁰⁵ *Standards of Ethical Conduct of the Treasury* § 3101.103. En el texto citado se contiene una minuciosa normativa ética en este particular, para los empleados del Tesoro que trabajen para la *Office of the Comptroller of Currency* o para la *Office of Thrift Supervisión*, organismos ambos de control de los mercados monetarios y financieros, que –lógicamente– dado el tipo de información y procedimientos en que intervienen o pueden intervenir, es bastante más restrictiva en materia de intereses financieros (*Ibidem* § 3101.108 y 3101.109).

¹⁰⁶ Disposiciones semejantes se establecen en relación con las tareas de asesoramiento jurídico. Un abogado al servicio de una Agencia federal, por ejemplo, no podría aprovechar la información que ha conocido en relación con un procedimiento urbanístico en beneficio propio o de sus allegados. *Model Rules of Professional Conduct for Federal Lawyers, Rule 1.8 Conflict of Interest: Prohibited Transactions*.

¹⁰⁷ IRC § 7213. “Unauthorized disclosure of information. (a) Returns and return information. (1) Federal employees and other persons. It shall be unlawful for an officer or employee of the United States or a person described in section 6103(n) [26 USCS § 6103(n)] (or an officer or employee of a such person), or an former officer or employee, wilfully to disclose to a person, except as authorized in this title, a return or return information (as defined in section 6103(b) [26 USCS § 6103(b)]). A violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$ 5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense”. En el código de conducta propio de los empleados del *IRS* el deber de sigilo se contempla en los § 214.7 y 214.8 y en el de los empleados del Tesoro en el § 0.216, haciendo referencia a la normativa general que regula la materia, la *Privacy Act* de 1974.

¹⁰⁸ *IRS Rules of Conduct*, § 214.2.



Derecho americano se identifica, precisamente, con la expresión “*attorney-client*”¹⁰⁹, así como a los conflictos que pueden surgir entre el derecho a un proceso justo y el derecho a la información en lo que se refiere a la relación del abogado federal con los medios de comunicación¹¹⁰.

También se hace referencia en la normativa ética de la Agencia al deber de custodia segura y confidencialidad que concierne a los cargos públicos que sean responsables de requerir determinadas declaraciones de intereses profesionales y financieros¹¹¹.

3. EL EMPLEADO EN EXCEDENCIA

El compromiso ético del empleado público no termina con el abandono de su función. Es mas, una parte importante del mismo se refiere, precisamente, a la actividad que pueda desarrollar una vez que ha cesado su relación profesional con la entidad pública.

Ya se ha hecho notar que la frecuencia con la que en el mercado de trabajo americano se pasa de lo público a lo privado, y viceversa, lleva a que la ordenación ética de estas situaciones reciba una específica y peculiar denominación: *revolving door*. También se ha mencionado que en la ordenación de su contenido se corre el riesgo de comprometer las políticas públicas de recursos humanos, pues una restricción excesivamente rígida de las limitaciones posteriores al ejercicio del empleo público podría llevar a que tan solo se consiguiera reclutar para el mismo a personas de escasa valía.

La regulación de estas situaciones se contempla en la referida *Circular 230*, que es el código de conducta aplicable a todos los que ejercen ante el *IRS*, como asesores, abogados, gestores, testigos o peritos: también, claro está, a quienes antes de ejercer ante la Agencia han trabajado para la misma.

Si al tratar de las incompatibilidades que afectan a los empleados en activo se decía que no podían intervenir en cuestiones en las que hubieran intervenido personal y sustancialmente desde el sector privado, la *Circular 230* utiliza unos adjetivos semejantes a la hora de condicionar la actividad del ex-empleado público que ejerce ante el *IRS*. Se deberá abstener de intervenir en cualquier *transacción o conjunto de transacciones (Circular 230)*, que hubiera estado bajo su “personal responsabilidad o supervisión”.

Dadas las características del trabajo interpretativo u organizativo que en muchos casos se puede llevar a cabo en la Agencia, se contempla al respecto una regla especial para los casos en que se hubiera intervenido en este tipo de tareas, denominadas con carácter genérico de elaboración normativa (*rulemaking*). El haber participado de algún modo en la redacción de una instrucción, circular, resolución o contestación a consulta, no inhabilita al empleado público para intervenir, una vez que ha pasado al sector privado, en procedimientos en los que se haga uso de dichos documentos. Eso sí, lo que no podrá hacer es interponer respecto de los mismos un recurso directo encaminado a su anulación¹¹².

Si quien pasó a trabajar en la Agencia tenía un deber de confidencialidad por cuanto a aquello que hubiera conocido trabajando para anteriores clientes, lógicamente, quien abandona el *IRS* tiene el mismo deber de sigilo. De modo que no puede utilizar información que hubiera conocido como empleado del *IRS* contra la propia Agencia o contra un tercero, a cuya información se tuvo acceso desde la Agencia, por haber participado en la resolución, informe, investigación o consulta del asunto.

Los socios del ex-empleado de la Agencia también pueden ver limitada su capacidad de intervención en asuntos de los que éste conoció. A este respecto la incompatibilidad se puede salvar, siempre y cuando se respeten unas reglas de aislamiento¹¹³:

¹⁰⁹ *Model Rules of Professional Conduct for Federal Lawyers, Rules 1.6 Confidentiality of Information, 1.10 Imputed Disqualification: General Rule y 1.4.b) Truthfulness in Statements to Others.*

¹¹⁰ *Model Rules of Professional Conduct for Federal Lawyers, Rule 3.6.*

¹¹¹ *IRM 30.4.8.13.3.*

¹¹² *Cfr. Circular 230 § 10 26 (b) (4).*

¹¹³ “*Revolving Door*” 445 A2d 615 (D.C. App. 1982).

- Informar de la situación al *IRS* sin que la Agencia manifieste oposición al respecto.
- Comprometer por escrito, la prohibición de acceso del ex-empleado a todos los materiales del caso y la comunicación con otros socios sobre el particular.
- Notificar por escrito a todos los miembros de la firma, la situación de aislamiento del socio respecto del asunto en cuestión.
- Juramento ante el *Director of Practice*, del implicado y de un socio de la firma garantizando el respeto de las reglas de aislamiento.

Lógicamente las disposiciones éticas adoptadas por la Asociación de juristas al servicio de la Administración federal dedica varios apartados y comentarios a estas cuestiones. Mediando una relación de defensa jurídica, por ejemplo, las limitaciones son más estrictas en un sentido –la imposibilidad de intervenir en un asunto con el que se tuvo relación antes de trabajar para la Agencia–, como en el otro –las restricciones para participar en asuntos de los que se tuvo conocimiento como empleado de la Agencia, una vez que se ha abandonado¹¹⁴.

En este orden de cosas, no puede dejar de mencionarse la legislación federal¹¹⁵ que regula las restricciones en la actividad de oficiales, empleados y empleados especiales de cualquier Agencia americana, incluidas las independientes, entre las que se encuentra el *IRS*, una vez que abandonan sus funciones públicas.

De mayor a menor duración, se puede resumir la normativa vigente al respecto en tres restricciones:

- a) Permanente para intervenir en cuestiones en las que haya “personal” y “sustancialmente” participado y en las que EEUU sea parte o tenga interés directo. Valga lo dicho en cuanto al modo en el que esta restricción se matiza en lo relativo a la intervención en disposiciones interpretativas o, también se regulan especialidades al respecto, para el caso de que se haya intervenido en la negociación de tratados internacionales, lo que, en la Administración tributaria, podría muy bien darse en materia de convenios sobre evasión fiscal y atenuación de la doble imposición.
- b) Dos años de prohibición para:
 1. Actuar como comisionados o abogados en procedimientos, consultas, demandas, contratos o controversias en las que los EE.UU. sean parte o tengan un interés directo;
 2. Intervenir en cuestiones que hubieran conocido, o que resulte razonable pensar que hayan podido conocer, estando pendientes de resolución y en las que hubieran tenido una responsabilidad directa durante el año precedente al de haber finalizado su relación con el Gobierno federal.
- c) Un año de prohibición, para los llamados *senior officers* –quienes hubieran desempeñado un cargo de responsabilidad– para ejercer representación o llevar a cabo gestión alguna –a salvo, claro está, de las relativas al cumplimiento de las obligaciones propias o de familiares– ante el Departamento en el que se estuvo desarrollando el cargo. A este respecto se interpreta que el Departamento del Tesoro no es el *IRS*.

Esta normativa tiene ciertas excepciones:

- a) En 1996 se aprobaron algunas salvedades, en cuanto a la prohibición de dirigirse a Departamentos en los que se hubieran desempeñado funciones de responsabilidad, por lo que a las actividades de los partidos políticos afecta.
- b) Sí se puede intervenir, gratuitamente, como representante de un tercero –un anterior subordinado, por ejemplo– en procedimientos disciplinarios o de honor, así como en

¹¹⁴ *Model Rules of Professional Conduct for Federal Lawyers, Rules 1.9-1.12.*

¹¹⁵ 18 USC § 207. La OGE ha dictado disposiciones que desarrollan esta normativa (*cf.* 5 CFR 2641, *Post-employment conflict of interest restrictions*).



defensa de parientes, cónyuge, hijos o personas bajo custodia o confianza, excepto en casos en los que haya actuado personalmente o hayan sido de su personal responsabilidad.

- c) Quienes tengan una calificación científica o tecnológica relevante pueden actuar como agentes, abogados, o consultores en asuntos financiados o contratados por los EEUU, siempre que el Jefe del Departamento o de la Agencia certifique que su actividad puede servir al interés nacional.

El incumplimiento de estas restricciones puede conllevar penas de entre uno y cinco años de prisión y multas de hasta \$50,000 o el importe de lo que haya cobrado por cada infracción.

4. RELACIONES ESPECIALES

La normativa establece disposiciones particulares para los calificados como *Special Government Employees*¹¹⁶, aquellos que no tienen una relación laboral ininterrumpida con el Gobierno, sino que trabajan para el mismo en periodos inferiores a 130 días al año.

Con carácter general no se les aplican las normas previstas para los demás empleados, pero sí algunos capítulos de las mismas como, por ejemplo, confidencialidad, conducta, o regalos recibidos de Gobiernos extranjeros¹¹⁷.

Tampoco les resulta de aplicación, con carácter general, la normativa relativa a la restricción de actividades.

Entre las reglas de conducta de los asesores jurídicos de la Administración federal se dedican varias a cuestiones relativas a los eventuales conflictos éticos que se les pueden plantear cuando actúan, no ya en tareas de defensa de los intereses de la Agencia, sino como consultores, intermediarios, testigos o peritos¹¹⁸. Un inspector, por ejemplo, no debería ser llamado a dictaminar por un tribunal penal o por un órgano administrativo de regulación o fiscalización en asuntos de los que hubiera tenido conocimiento en el ejercicio de sus tareas de investigación¹¹⁹; Quien trabaja para una Agencia y piensa que una determinada decisión puede tener consecuencias perjudiciales para los intereses de la misma, en otro sentido, tiene la obligación moral de advertirlo al responsable de la misma, se dice en los comentarios de la regla, "even if the advice is unwanted".

SELECCIÓN DE JURISPRUDENCIA

- *McDonnell Douglas Corp. v. United States ex. rel. O’Keefe*, 132 F.3d 1252 (8th Cir. 1998). No se pueden utilizar facultades conferidas en protección del interés público para defender el particular interés de una Agencia en un proceso civil, con infracción de las normas de conducta que rigen las relaciones entre abogados y clientes.
- *S. Trafficante, Jr.*, CA-5, 64-1 USTC ¶ 9265, 328 F2d 117. Confirma la deslegitimación de un antiguo abogado del IRS para actuar como abogado en un proceso relativo a un procedimiento de recaudación en el que había intervenido, desde el IRS, en fase de inspección.

¹¹⁶ 18 USC 202: The term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of an independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during a period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, or a part-time United States commissioner, a part-time United States magistrate [United States magistrate judge], or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and a person appointed by that independent counsel under section 594(c) of title 28.

¹¹⁷ *Treasury Rules of Conduct* § 401.

¹¹⁸ *Model Rules of Professional Conduct for Federal Lawyers*, Rules 2.1.-2.3.

¹¹⁹ A una situación comparable, el asesor jurídico de la Administración que es llamado a declarar como testigo en un proceso –de cargo o de descargo– se refiere la regla 3.7 del *Model Rules of Professional Conduct for Federal Lawyers*. En su testimonio, en su dictamen, no sería fácil distinguir si el mismo forma parte de la prueba o del análisis de la prueba, lo que –en buena lógica– afecta a su credibilidad.

- *Florida Iron and Metal, Inc.*, CA-5, 61-2 USTC ¶ 9511, 291, F2d 333. La prohibición se extiende a todo tipo de demandas y en relación con cualquier Departamento del Gobierno, sea cual sea aquel en el que se haya estado empleado.
- “*Revolving Door*” 445 A2d 615 (D.C. App. 1982).

RELACIÓN DE NORMATIVA Y DOCUMENTACIÓN ADMINISTRATIVA

- AMERICAN BAR ASSOCIATION:
 - *Model Code of Professional Responsibility* (1969).
 - *Model Rules of Professional Conduct* (2004) (http://www.abanet.org/cpr/mrpc/mrpc_home.html).
- FEDERAL BAR ASSOCIATION, ETHICS COMMITTEE:
 - *Model Rules of Professional Conduct for Federal Lawyers* (1990).
- INTERNAL REVENUE SERVICE:
 - *Rules of Conduct (Documento 7098)*.
 - *IRS’ Conference and Practice Requirements* (26 CFR 601).
 - *Employee Conduct and Ethics* (IRM 30.4.8.5).
- OFFICE OF ASSOCIATE CHIEF COUNSEL (IRS):
 - MISC-DOC, 2000ARD 016-5, Chief Counsel Notice N(30)(3)000-1: General Legal Services: Organization.
- OFFICE OF GOVERNMENT ETHICS:
 - *Standards of Ethic Conduct for Employees of the Executive Branch* (5 CFR part. 2635).
- TAX COURT:
 - *Rules of Practice and Procedure*.
- TREASURY DEPARTMENT:
 - *Circular 230. Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service* (31 C.F.R., Subtitle A, Part.10).
 - *Supplemental Standards of Ethical Conduct for Employees of the Treasury Department* (5 C.F.R. Part 3101).
 - *Treasury Rules of Conduct* (31 C.F.R. Part 0).
- UNITED STATES CODE
 - *Code of Ethics for Government Service*. House Document 103, 86th Congress, 1st Session.
 - 18 USC § 205 Actividades de oficiales y empleados en demandas y otras actividades relativas al Gobierno.
 - 18 USC § 207 Restricciones relativas a oficiales, empleados y cargos de los poderes ejecutivo y legislativo.

BIBLIOGRAFÍA

- FERREIRO LAPATZA, J.J. *et al.* (2005): *La Justicia Tributaria en España*, Marcial Pons, Madrid/Barcelona.
- GARCÍA MEXÍA, P. (2001): *Los Conflictos de Intereses y la Corrupción Contemporánea*, Aranzadi, Elcano.
- ROSEMBUJ ERUJIMOVITCH, T. (2000): *Transacción y mediación tributaria*, Atelier, Barcelona.
- ROZAS VALDÉS, J.A. (2004): “La resolución de controversias tributarias en el ordenamiento americano”, en *Revista Técnica Tributaria*, núm. 64, págs. 55-66.
- SÁNCHEZ DE MOVELLÁN TORRENT, I. (2004): *Les Institucions fiscalitzadores de la Generalitat de Catalunya*, Sindicatura de Comptes de Catalunya, Barcelona.
- WOLFMAN, B.; HOLDEN, J.P. y HARRIS, K.L. (1999):, *Standards of Tax Practice*, 5.^a ed., Tax Analysts, Arlington (VA, USA).

2. CÓDIGOS DE CONDUCTA EN LA ADMINISTRACIÓN TRIBUTARIA DEL REINO UNIDO

SUMARIO: 1.-Estructura organizativa y fuentes normativas. 2.-Código de conducta de los empleados de la administración tributaria en cuanto empleados públicos. 2.1.-Relación entre los empleados públicos y la Administración. 2.2.-Comportamiento general ante los ciudadanos. 2.3.-Incumplimiento. 3.-Código de conducta de los empleados de la Administración tributaria en cuanto trabajadores del HM Treasury Department. 3.1.-Relación interna. 3.2.-Relaciones con los ciudadanos. 4.-Código de conducta de los empleados de la Administración tributaria en cuanto trabajadores del HM Revenue&Customs. 4.1.-Deber de confidencialidad. 4.2.-Conflictos de intereses. 4.2.1.-Intereses personales. 4.2.2.-Intereses profesionales. Relación de normativa y documentación administrativa. Bibliografía.

1. ESTRUCTURA ORGANIZATIVA Y FUENTES NORMATIVAS

Para entender el sistema de fuentes que rige en el ámbito de los códigos de conducta de los empleados al servicio de la Administración tributaria británica es preciso iniciar el presente estudio haciendo una breve referencia al complejo entramado organizativo y estructural de la Administración pública de este país. En términos generales, la consideración de un organismo, sector o agencia como público o privado depende del carácter que sea atribuible a aquél que ostenta, ejerce y controla, directa o indirectamente, la política corporativa que afecta al mismo¹²⁰. En este contexto, siguiendo los criterios de clasificación presupuestaria del gasto¹²¹, el sector público británico está formado por tres grandes subsectores¹²²: el Gobierno central –integrado, esencialmente, por los Departamentos gubernamentales y sus agencias, las Administraciones de Escocia, Gales e Irlanda del Norte y los Organismos públicos no departamentales (*Non-Departmental Public Bodies*)–; el Gobierno local –integrado por las Administraciones públicas responsables de localidades específicas–; y las Corporaciones públicas –esto es, organismos, sociedades o entidades públicas que operan en el mercado, esencialmente empresas públicas, controladas por los Gobiernos central y local–.

Sentado lo anterior, resulta conveniente profundizar en el esquema organizativo del primero de los subsectores apuntados, esto es, el Gobierno central en cuanto ámbito organizativo del que forma parte la Administración tributaria británica. En Gran Bretaña, el Gobierno central está integrado por diversos Departamentos gubernamentales (*Government Departments*)¹²³ clasificados en dos grandes grupos: Departamentos ministeriales (*Ministerial Government Departments*), al frente de los cuales se sitúa un Ministro, directamente responsable de los mismos¹²⁴, y Departamentos no ministeriales (*Non-ministerial Government Departments*), dirigidos por funcionarios públicos, no Ministros, y cuya relación con estos varía según su política particular y su marco estatutario a pesar de que es una característica común a los mismos su distancia e independencia del control ministerial. En el marco de este esquema general, el equivalente a nuestra Administración tributaria –denominada *Her Majesty's Revenue&Customs* (en adelante *HMRC*)– se configura como un departamento gubernamental administrativamente dependiente de la Secretaría permanente *Her Majesty's Treasury*, Secre-

¹²⁰ Cfr. "Classification of Public Bodies. Guidance for Departments", Cabinet Office, August 2005, pág. 2.

¹²¹ Cfr. "Classification of Expenditure: Public and Private Sectors", HM Treasury, November 2000 (puede consultarse en <http://www.wga.gov.uk/pages/classification.html>).

¹²² *Ibidem*, pág. 2.

¹²³ Asimismo, junto a los citados departamentos gubernamentales, merece la pena destacar la existencia de los denominados *Non-Departmental Public Bodies (NDPBs)*, esto es, organismos no departamentales de carácter independiente que desarrollan funciones públicas y que ocupan un importante papel en el marco del Gobierno Nacional a pesar de que, formalmente, no forman parte del mismo. Actualmente, existen en el Reino Unido unos 1.000 *NDPBs*. Este es el caso, entre otros, de la *Environment Agency*, el *Medical Research Council* o la *UK Atomic Energy Authority*.

¹²⁴ Subordinadas a los Departamentos ministeriales se encuentran las conocidas Agencias ejecutivas británicas (*Executive Agencies*), coloquialmente denominadas *QUANGO's (Quasi Autonomous Non-Government Organisations)*. Estas agencias se configuran como organismos públicos a los que se reconoce un elevado grado de autonomía para llevar a cabo sus funciones y contratar a su propio personal –que se convierten en trabajadores del sector público (*public servants*) pero no funcionarios (*civil servants*)–, a pesar de que los fondos económicos que nutren sus arcas y su política estratégica es establecida por el correspondiente Departamento ministerial.



taría que asume competencias paralelas a las que en España corresponden al Ministerio de Economía y Hacienda en cuanto departamento gubernamental responsable de la política financiera y económica del país.

Con anterioridad a abril de 2005, dentro del *Her Majesty's Treasury Department* la gestión de los tributos correspondía a dos organismos o departamentos distintos¹²⁵: por su parte, el *Board of Inland Revenue* tenía competencia sobre la totalidad de los impuestos directos, mientras que la gestión de los impuestos especiales, los derechos de aduanas y el equivalente al IVA español – *Value Added Tax*– correspondía al *Board of Customs and Excise*. En aras a una mayor efectividad en la gestión tributaria y con el fin de reducir al máximo la creciente evasión fiscal del país, a mediados de 2004 se inicia la reforma estructural de estos departamentos, reforma que culmina con la integración de los mismos en un único departamento gubernamental: el *Her Majesty's Revenue&Customs*, departamento encargado de la gestión, recaudación e inspección de los impuestos directos e indirectos y del ejercicio de importantes controles sobre las contribuciones sociales nacionales y la distribución de las ayudas sociales a la infancia y otras variadas formas de ayudas estatales. Su constitución ha dado lugar a la aprobación de la *Commissioners for Revenue and Customs Act de 2005*, texto normativo que constituye el marco regulador de la institución así como de los deberes y obligaciones de sus miembros.

En el contexto descrito, el estudio del Código de Conducta que resulta de aplicación a todos aquellos que prestan servicios en la Administración tributaria británica pasa, necesariamente, por el análisis de tres niveles de disposiciones, distintas pero complementarias entre sí, dada la pertenencia y dependencia funcional de los mismos a la Administración pública, en primer lugar, al Departamento del Tesoro, en segundo lugar, y, finalmente, a la propia Administración tributaria en la que directamente desempeñan sus funciones. Así, todo empleado al servicio del HMRC deberá respetar, como veremos, en primer lugar, los denominados “*Seven Principles of Public Life*”, en cuanto se trata de empleados públicos; en segundo lugar, deberá tener en consideración el “*The Treasury's Code of Conduct*”, en cuanto se trata de trabajadores que, pertenecientes al HMRC, están, a su vez, al servicio del Departamento del Tesoro; y, finalmente, deberá respetar las disposiciones contenidas en la “*Commissioners for Revenue and Customs Act 2005*”, marco regulador de las funciones y competencias del HMRC, así como las previsiones contenidas en el Código de Conducta propio del HMRC¹²⁶. Como veremos la fuerza normativa y efectividad de cada una de estas disposiciones es muy distinta, en cuanto en el segundo supuesto nos encontramos ante simples manifestaciones de voluntad o de valores que resultan exigibles a todo trabajador al servicio de la Administración Pública pero carentes de fuerza impositiva alguna, mientras que en el primer y últimos supuestos su inaplicación o incumplimiento lleva aparejado un amplio sistema sancionador que pretende garantizar su efectividad.

2. CÓDIGO DE CONDUCTA DE LOS EMPLEADOS DE LA ADMINISTRACIÓN TRIBUTARIA EN CUANTO EMPLEADOS PÚBLICOS

Los empleados del HMRC son, en su integridad, funcionarios públicos (*civil servants*)¹²⁷, circunstancia que comporta la directa aplicación a los mismos de las previsiones contenidas en el *Civil Service Code*¹²⁸, código que recoge los términos y condiciones en que debe procederse a la

¹²⁵ Sobre el contenido de la reforma ver, por todos, el detallado informe de O'DONELL, G. (2004), *passim*.

¹²⁶ Se trata de un código interno que es facilitado a todos los trabajadores del HMRC en el momento en que empiezan a trabajar en el mismo. El último borrador de este código, que refunde el contenido de los que regulaban la conducta de los empleados al servicio de las dos Agencias tributarias anteriormente existentes, es de 12 de enero de 2006 y es la que hemos manejado para realizar el presente trabajo.

¹²⁷ De acuerdo con la “*Classification of Public Bodies*”, realizada por el *Cabinet Office* (“*Classification of Public Bodies. Guidance for Departments*”, *Cabinet Office*, August 2005, pág. 1), “*staff of Non-Ministerial Departments* –entre los que se encuentra el HM Revenue&Customs– are *civil servants*”. En este mismo sentido se establece en la Subsección 6.ª de la Sección 2.ª de la *Commissioners for Revenue and Customs Act 2005* al indicar que “*Service in the employment of the Commissioners is service in the civil service of the State*”. Porcentualmente, los empleados del HM Revenue&Customs suponen el 20% del total de funcionarios públicos de todo el país, con aproximadamente un total de 100.000 empleados (Fuente: <http://www.hmrc.gov.uk/about/corporate-responsibility/index.htm>).

¹²⁸ El *Civil Service Code* forma parte de una normativa mucho más amplia, el *Civil Service Management Code*, al cual se añade en forma de anexo (concretamente, anexo A de la Sección 4.1, del Capítulo 4).

contratación de los empleados públicos británicos¹²⁹ así como los estándares de conducta que se espera de los mismos. En otros términos, el *Civil Service Code* se configura como el “marco constitucional dentro del que los empleados públicos deben desarrollar sus funciones así como el conjunto de valores que todo ciudadano espera encontrar en los mismos”¹³⁰.

2.1. Relación entre los empleados públicos y la Administración

En el marco de las relaciones entre los empleados públicos y la Administración a la que sirven, los empleados públicos tienen la consideración de “sirvientes” de la Corona. En efecto, “constitucionalmente, todas las Administraciones forman parte de la Corona y, de acuerdo con las previsiones establecidas en el *Civil Service Code*, los empleados públicos deben su lealtad a la Administración en la que están empleados”¹³¹. En este contexto, la *fidelidad*, la *lealtad* y el *compromiso* con que los empleados públicos deben actuar en su quehacer diario se configuran como los valores fundamentales que rigen y definen la relación de los mismos con la Administración pública, reflejo constitucional de la Corona, a la que sirven.

2.2. Comportamiento general ante los ciudadanos

La relación de valores exigibles a todo empleado público son reiteradamente enunciados en los distintos Códigos de conducta que rigen en los diversos ámbitos de la Administración pública británica. Así, es habitual encontrar referencias a la integridad, imparcialidad u honestidad de los empleados públicos; a su eficacia y eficiencia, así como a la objetividad, la cortesía o la diligencia en su actuación. Ahora bien, el valor que aparece en directa interconexión con cada uno de los valores enunciados es siempre el mismo: la necesaria prevalencia del interés público en la actuación de todo empleado público, circunstancia que no es más que una consecuencia de la consideración de los mismos como “sirvientes” de la Corona y, en definitiva, de la Administración para la que trabajan.

En este sentido, la conducta que se espera de todo empleado público es concretada en una serie de principios por el *Committee on Standards in Public Life*, un Comité permanente, de carácter independiente, creado en octubre de 1994, cuyos miembros son representantes de todos los sectores o agentes del sector público británico y cuya razón de ser es la de examinar las cuestiones que diariamente derivan de la actuación de los empleados públicos en aras a realizar las correspondientes recomendaciones para mejorar la calidad de los servicios públicos y la atención a los ciudadanos¹³². Pues bien, en aplicación de sus competencias, el *Committee on Standards in Public Life* realizó una recomendación que recoge los siete principios básicos que deben regir la conducta o comportamiento de todo empleado público y, en consecuencia, de todo funcionario público: “*The Seven Principles of Public Life*”¹³³: *Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership*.

Se trata de siete valores o principios que todo ciudadano espera encontrar en los empleados públicos, y cuyo establecimiento encuentra su razón de ser en tres motivos fundamentales¹³⁴: por un lado, en el hecho que los empleados públicos tienen la responsabilidad de dar ejemplo, proporcionando una guía de conducta de lo que resulta aceptable y lo que no; por otro, porque los empleados públicos disponen de un considerable poder y responsabilidad en el desarrollo de sus funciones; y, finalmente, pero no por ello menos importante, porque son pagados con dinero público.

Como apuntábamos, se trata de principios generales cuyos rasgos fundamentales son definidos por el *Civil Service Code*, sin perjuicio de la posterior concreción de los mismos por las dis-

¹²⁹ Las previsiones contenidas en el *Civil Service Code* resultan de aplicación en todo el territorio del Reino Unido (Escocia, Inglaterra y Gales). Cfr. Sección 1.ª *Civil Service Code*.

¹³⁰ Cfr. “*The Civil Service Code*” (información contenida en la *Office of the Civil Service Commissioners*, pág. 1).

¹³¹ Cfr. Sección 2.ª *Civil Service Code*.

¹³² Cfr. <http://www.public-standards.gov.uk/>. El debate parlamentario sobre la creación de este Comité y de sus funciones puede consultarse en *Hansard (House of Commons Daily Debates)*, 25 octubre 1994, col 758 y ss.

¹³³ El impacto de estos principios en la actuación de los empleados públicos y su visión crítica por parte de los ciudadanos son dos de las principales cuestiones analizadas en el detallado estudio que de los mismos han realizado GRAHAM, J.; O’CONNOR, W.; CURTICE, J. y PARK, A. (2003) *passim*.

¹³⁴ Cfr. *Ibidem*, pág. 1.



tintas agencias o departamentos gubernamentales¹³⁵ y de la atribución de competencias, esencialmente en lo que se refiere al ámbito local, que en esta materia corresponde a Inglaterra, Escocia y Gales¹³⁶. En este contexto, el contenido esencial de los siete principios enunciados puede concretarse del siguiente modo:

- a) *Desinterés y defensa del interés público*: Los empleados públicos deben actuar en defensa del interés público, el cual debe prevalecer sobre sus intereses particulares. Asimismo, no deben hacer un mal uso de la información de la que disponen como consecuencia de su posición, ni utilizarla en beneficio propio, de sus familiares ni de terceros¹³⁷.
- b) *Integridad*: Los empleados públicos no deben actuar bajo la influencia de intereses financieros o cualquier otro tipo de obligación que pueda poner en cuestión su independencia para llevar a cabo las tareas que tienen encomendadas. Asimismo, deben actuar con integridad en relación al suministro de información a sus superiores, a los Ministros o, en su caso, a la Asamblea Nacional, sin temor ni favoritismos y facilitando toda la información de la que dispongan con la mayor objetividad e imparcialidad en aras a no llevar a conclusiones erróneas a quienes obtienen y deben hacer uso de dicha información¹³⁸.

Una clara manifestación de la integridad como valor que debe concurrir en todo empleado público se encuentra en la imposibilidad de estos de recibir cualquier tipo de regalo o compensación que pueda poner en entredicho su criterio e integridad¹³⁹. A tal efecto, cada departamento u organismo público deberá informar al personal al servicio del mismo de los supuestos en que la aceptación de un regalo, compensación o premio requiere el previo permiso de los superiores jerárquicos como mecanismo de control dirigido a neutralizar las posibles injerencias que tales dádivas pueden ocasionar en la toma de decisiones y en el desarrollo de las funciones de los empleados públicos¹⁴⁰.

- c) *Objetividad*: En el desempeño de sus funciones, y especialmente en relación a la realización de nombramientos públicos, la adjudicación de contratos o la recomendación de alguien para que pueda ser recompensado o beneficiado, los empleados públicos deben actuar con la máxima objetividad y basar sus decisiones en el mérito de los candidatos o propuestas recibidas¹⁴¹.
- d) *Responsabilidad*: Los empleados públicos son responsables de sus decisiones y acciones ante los ciudadanos, debiendo analizar y adoptar aquellas acciones que resultan más adecuadas para el interés general.

¹³⁵ En efecto, los “*Seven Principles of Public Life*” son recogidos y desarrollados por los Códigos de Conducta aprobados por los distintos organismos, departamentos y agencias gubernamentales, siguiendo las directrices marcadas por el *Committee on Standards in Public Life* (en este punto resulta de gran interés el estudio “*Standards in Public Life: First Report of Committee on Standards in Public Life*”, CM 2850-1, HMSO, London, 1995). En este sentido, y sin ánimo de ser exhaustivos, puede verse el propio “*Code of Practice for Members of the Committee on Standards in Public Life*”, el “*Code of Practice for Ministerial appointments to public bodies*”; los “*Nacional Standards for Enforcement Agents*” o “*The Code of Conduct together with The Guide to the Rules Relating to the Conduct of Members*” aplicable a los miembros de la *House of Lords*.

¹³⁶ En efecto, en aplicación de las previsiones contenidas en la Parte III de la *Local Government Act* de 2000, han sido aprobadas tres disposiciones que resultan de interés en relación a la materia objeto de estudio en el presente trabajo: *The Code of Conduct, Order (Qualifying Local Government Employees)*, Wales, Order 2001; *The Local Authorities (Model Code of Conduct)*, England, Order 2001; y *Ethical Standards in Public Life*, Scotland Act 2000.

¹³⁷ Estas mismas previsiones se encuentran recogidas en la Sección 8 del *Civil Service Code*.

¹³⁸ Cfr. Sección 5 *Civil Service Code*.

¹³⁹ Cfr. apartado c) de la Subsección 4.1.3 de la Sección 4.1 del Capítulo 4 del *Civil Service Management Code*, previsión desarrollada en la Sección 8 *Civil Service Code*.

¹⁴⁰ Como veremos en el último epígrafe del presente trabajo, en el ámbito de la Administración Tributaria británica estas previsiones se encuentran recogidas en la Sección *RCHRG3.7 del HMRC's Code of Conduct Guidance*.

¹⁴¹ En palabras del propio *HMRC*, este valor es de especial relevancia en sus empleados y afecta, de manera directa e inmediata, a la propia imagen que los ciudadanos poseen de la Administración Tributaria británica, dado que la “integridad del Departamento depende de la honestidad, imparcialidad y objetividad de sus propios empleados” (cfr. Sección *RCHR3.8 del HMRC Code of Conduct Guidance*).

- e) *Transparencia*: Los empleados públicos deben actuar de manera transparente en la adopción de sus decisiones y acciones. Es por ello que deben justificar sus decisiones ante los ciudadanos excepto cuando el interés público exige, de manera clara e indubitada, la restricción de la información que debe ser ofrecida al público.
- f) *Honestidad*: Los empleados públicos tienen la obligación de declarar todos los intereses privados relacionados con sus obligaciones públicas.

Asimismo, deben adoptar las medidas necesarias para solucionar los posibles conflictos de intereses que puedan surgir en el desarrollo de sus funciones, siempre con el objetivo de proteger el interés público. En términos generales, la solución de los conflictos de intereses se ha concretado en la obligación de todo empleado público de realizar una declaración en la que se pongan de relieve los intereses, financieros, no financieros e inmobiliarios que puedan interferir en el desarrollo de sus funciones, declaración que debe ser realizada tan pronto como se ponga de manifiesto el citado conflicto de intereses.

- g) *Liderazgo*: Los empleados públicos deben promover y apoyar todos estos principios con liderazgo y ejemplo.

A estos principios generales, el *Civil Service Code* añade la *simpatía*, la *rapidez*, la actuación sin prejuicios ni predisposiciones¹⁴² y la *eficacia* y la *eficiencia* en el uso de los recursos públicos¹⁴³ como valores esenciales que deben concurrir en toda actuación pública, haciendo especial hincapié en la *confidencialidad*¹⁴⁴ con que los empleados públicos deben actuar, estando obligados a no revelar información de la que sean conocedores como consecuencia de su trabajo en el seno de la Administración pública, excepto en los supuestos y términos establecidos en la correspondiente normativa reguladora del derecho a la obtención de información¹⁴⁵.

2.3. Incumplimiento

Como apuntábamos al inicio del presente epígrafe, los siete principios establecidos por el *Committee on Standards in Public Life* se configuran como un conjunto de valores que resultan deseables en la conducta de todo empleado público pero cuyo incumplimiento no lleva aparejada, directamente, una sanción, excepto cuando se trate de una conducta delictiva o ilegal tipificada como tal en una norma con rango de ley y declarada como tal por la autoridad judicial competente.

Ahora bien, el hecho de que los citados principios hayan sido recogidos, con mayor o menor detalle, por el *Civil Service Code* conlleva la posibilidad de perseguir su incumplimiento de acuerdo con el procedimiento establecido a tal efecto por la *Office of the Civil Service Commissioners*, oficina o dependencia encargada de resolver todas las cuestiones que afectan a los empleados públicos y, fundamentalmente, las quejas o recursos que afectan a los mismos en el desarrollo de sus funciones¹⁴⁶.

Así, cuando un empleado público crea que está siendo obligado a llevar a cabo una actuación ilegal, impropia o inmoral, a realizar una actuación que puede contravenir una previsión constitucional o un código profesional o bien que pueda resultar contraria a las previsiones establecidas en el *Civil Service Code*, deberá informar inmediatamente a sus superiores jerárquicos, de acuerdo con el procedimiento interno establecido a tal efecto en su departamento, oficina u organismo¹⁴⁷. Asimismo,

¹⁴² Cfr. Sección 6 *Civil Service Code*.

¹⁴³ Cfr. Sección 7 *Civil Service Code*.

¹⁴⁴ Cfr. Sección 10 *Civil Service Code*.

¹⁴⁵ El acceso y la revelación de la información de que disponen las Administraciones Públicas encuentra su régimen jurídico en la *Data Protection Act de 1998* y en la *Freedom of Information Act de 2000*.

¹⁴⁶ Las líneas generales que rigen las apelaciones, recursos o quejas presentadas ante la *Office of the Civil Service Commissioners* se encuentran detalladas en la siguiente dirección electrónica: http://www.civilservicecommissioners.gov.uk/publications_and_forms/html/appeal_leaflet/index.asp. Por su parte, el *Civil Service Code* regula esta materia en sus secciones 11 y 12.

¹⁴⁷ Cuando estos conflictos se producen en el marco del *HMRC* deberán atenderse las previsiones contenidas en la *Sección RCHRG3.12* del *HMRC's Code of Practice Guidance*.



mo, también deberá informar de cualquier evidencia de criminalidad o ilegalidad en las actuaciones llevadas a cabo por otros empleados públicos, así como de cualquier vulneración de las disposiciones establecidas en el *Civil Service Code*. Una vez recibida la respuesta de sus superiores jerárquicos, si el empleado público entiende que la misma no resulta razonable o en la dirección que considera adecuada, deberá presentar un escrito ante la *Office of the Civil Service Commissioners*, explicando el caso, los fundamentos y la respuesta obtenida de los responsables de su departamento. Recibido el escrito, la *Office of the Civil Service Commissioners* deberá analizar la documentación presentada en aras a adoptar las medidas que estime oportunas y aconsejar al departamento en el que trabaja el empleado que presentó la queja sobre cómo debe proceder. La decisión final de la *Office of the Civil Service Commissioners* es inapelable. Asimismo, en caso de que del análisis del supuesto planteado deriven indicios claros de delito, la *Office of the Civil Service Commissioners* deberá ponerlo en conocimiento de las autoridades competentes para que sean éstas las que continúen con la investigación y, en su caso, adopten las medidas legales que correspondan.

3. CÓDIGO DE CONDUCTA DE LOS EMPLEADOS DE LA ADMINISTRACIÓN TRIBUTARIA EN CUANTO TRABAJADORES DEL HM TREASURY DEPARTMENT

Como apuntábamos al inicio de la exposición, el *HM Revenue&Customs* se configura como un departamento gubernamental administrativamente dependiente de la Secretaría Permanente *HM Treasury*. Esta circunstancia determina la sumisión de los empleados públicos al servicio de aquél al Código de Conducta aprobado por el Departamento del Tesoro británico, del cual dependen orgánicamente.

En este contexto, el código de conducta publicado por el *HM Treasury – Treasury’s Code of Conduct* se configura como una declaración o manifestación de voluntades y valores sobre el buen hacer¹⁴⁸ de los miembros adscritos a dicho Departamento¹⁴⁹. En consonancia con la filosofía del *Committee on Standards in Public Life*, a la que ya hemos hecho referencia en el epígrafe anterior, son tres los objetivos que fundamentan y respaldan la aprobación del *Treasury’s Code of Conduct*: en primer lugar, el establecimiento de un marco general que proporcione a los trabajadores del Departamento la sensación de que son valorados miembros del mismo; en segundo lugar, la estimulación de los empleados para que lleven a cabo sus tareas de manera correcta y en buena relación con sus compañeros; y, finalmente, la creación de un clima de armonía y cooperación.

El breve texto del *Treasury’s Code of Conduct* se puede dividir en dos grandes apartados: en primer lugar, el relativo a los derechos y obligaciones de los miembros del Departamento en el ámbito interno, en sus relaciones con los compañeros de trabajo y con sus superiores; y el segundo, relativo a los valores que todo ciudadano espera encontrar en los empleados públicos al servicio de dicho Departamento en el desarrollo de sus tareas.

3.1. Relación interna

La primera parte del *Treasury’s Code of Conduct* regula los derechos y obligaciones de los miembros del Departamento del Tesoro en el ámbito interno, esto es, respecto a las relaciones entre los miembros del mismo así como respecto a sus superiores. En este sentido, se establecen cuatro derechos fundamentales de todo empleado al servicio del *HM Treasury*:

- Derecho a ser tratados con educación, cortesía y respeto.
- Derecho a tener sus propias creencias e ideologías.
- Derecho a ser tratados por los compañeros como un colega de profesión.
- Derecho a comunicar cualquier trato discriminatorio o vejatorio, sea físico o psicológico, del que sean objeto.

¹⁴⁸ “*The Treasury values are a simple and clear statement of how we should all work*” (cfr. Preámbulo *Treasury’s Code of Conduct*).

¹⁴⁹ En este apartado utilizamos la expresión más amplia de “miembros adscritos al Departamento” siguiendo la terminología empleada en el propio texto del *Treasury’s Code of Conduct*. Concretamente, en su texto se incluyen referencias al “*personnel at the Treasury*” o a “*every member of staff*”, quedando así incluidos en su ámbito de aplicación tanto los funcionarios como el personal laboral al servicio del Departamento del Tesoro.

Asimismo, el Código de Conducta del *HM Treasury* contempla las obligaciones fundamentales de todos sus miembros, obligaciones que pueden concretarse en los siguientes puntos:

- Tratar a los compañeros como personas individuales y mostrarse sensibles con sus respectivas necesidades.
- Elogiar el trabajo bien realizado y realizar una crítica constructiva en aras a fomentar la mejora del mismo.
- Ser positivo y no agresivo.
- Escuchar las opiniones de los demás y ser respetuoso con otros puntos de vista distintos del propio.
- Empezar las acciones pertinentes cuando se es testigo o se tiene conocimiento de cualquier acción o comportamiento irrazonable.
- Intentar aprender de los propios errores.

3.2. Relaciones con los ciudadanos

Como apuntábamos al inicio del presente epígrafe, el *Treasury's Code of Conduct* concluye con una referencia a los siete valores que se espera encontrar en los miembros del *HM Treasury* en el desarrollo de sus funciones: integridad; profesionalidad; efectividad; comunicación; estrategia; resultados y humanidad.

Ahora bien, en este contexto, lo que llama más la atención es el curioso juego de palabras que es utilizado en el Código para reconducir los siete valores enunciados a un único valor supremo: el *respeto*. A pesar de la dificultad que entraña la búsqueda de una definición de la palabra “respeto”, coincidimos con ROZAS VALDÉS cuando apunta lo sencillo que resulta, en cambio, pensar en comportamientos, conductas o personas que “uno calificaría de trato respetuoso y considerado, como se podría pensar de manifestaciones de lo contrario”¹⁵⁰. El sentido gramatical de la palabra “respeto” nos lleva a pensar en “la deferencia, la urbanidad, la tolerancia, la cortesía, el miramiento, la estima, el acatamiento, la compostura, el decoro, la admiración o la atención”¹⁵¹ con la que deben ser tratados los ciudadanos en sus relaciones con la Administración pública, adjetivos que, en cualquier caso, no hacen más que reflejar el comportamiento que resulta deseable de todo ciudadano, trabajo o no al servicio de la Administración pública, en su relación con los demás.

4. CÓDIGO DE CONDUCTA DE LOS EMPLEADOS DE LA ADMINISTRACIÓN TRIBUTARIA EN CUANTO TRABAJADORES DEL HM REVENUE&CUSTOMS

La creación, en 2005, del *Her Majesty's Revenue&Customs Department (HMRC)*, como consecuencia de la fusión del *Board of Inland Revenue* y del *Board of Customs and Excise*, derivó en la necesidad de aprobar un nuevo marco normativo que regulase la composición, funciones, competencias y personal al servicio del mismo. Este marco normativo está constituido, en primer lugar, por la *Commissioners for Revenue and Customs Act de 2005*, en segundo lugar, por el conjunto de *Codes of Practice*¹⁵² que desarrollan cada una de las funciones atribuidas al *HMRC* y, finalmente, por el *Code of Conduct Guidance* del propio *HMRC*.

4.1. Deber de confidencialidad

Sin olvidar los valores y principios que, en virtud del *Civil Service Code*, deben regir la conducta de todo empleado público, la *Commissioners for Revenue and Customs Act de 2005* así como la Sección 3.4 del *Code of Conduct Guidance* erigen como valor supremo de todo empleado del *HMRC* el deber de *confidencialidad*. En efecto, dada la ingente cantidad de información de la que disponen y conocen los empleados del *HMRC* como consecuencia del propio desarrollo de sus funciones, la confidencialidad se convierte en uno de los principios básicos que rigen la conducta o com-

¹⁵⁰ Cfr. ROZAS VALDÉS, J.A.: “Revocación tributaria” (en prensa).

¹⁵¹ *Ibidem*.

¹⁵² Los distintos *Codes of Practice* que resultan de aplicación a los empleados del *HMRC* pueden consultarse en <http://www.hmrc.gov.uk/leaflets/c11.htm>.



portamiento de los mismos. La relevancia de este principio se pone de manifiesto en la obligatoria declaración de confidencialidad que debe firmar cualquier persona que sea nombrada o contratada bajo la *Commissioners for Revenue and Customs Act de 2005*¹⁵³ “as soon as is reasonably practicable following the person’s appointment”¹⁵⁴.

La delimitación del ámbito material cubierto por la confidencialidad que debe jurar todo empleado al servicio del *HMRC* se encuentra regulada en la Sección 18 de la *Commissioners for Revenue and Customs Act de 2005*. De acuerdo con esta disposición, existe un deber general de confidencialidad de acuerdo con el cual los empleados del *HMRC* no pueden revelar ningún tipo de información que esté en poder del Departamento como consecuencia del ejercicio de las competencias atribuidas al mismo y en relación a sus propias funciones. Ahora bien, este deber cede en los supuestos taxativamente establecidos en la Subsección 2 de la Sección 18 de la *Commissioners for Revenue and Customs Act de 2005*, esto es:

- Cuando la revelación de información resulte imprescindible para los objetivos del propio *HMRC*.
- Cuando una cuestión de interés público fundamente la necesidad de comunicar determinada información¹⁵⁵.
- Cuando la revelación de información sea realizada en el marco de un procedimiento civil o penal (sea o no dentro del Reino Unido), en relación a asuntos en los que haya intervenido el *HMRC*¹⁵⁶ y, en general, cuando exista un requerimiento formal por parte de una Corte o Tribunal.
- Cuando exista un requerimiento por parte de los inspectores de Constabulary, Escocia o Irlanda del Norte, de acuerdo con las previsiones contenidas en la Sección 27 de la *Commissioners for Revenue and Customs Act de 2005*.
- Cuando exista un requerimiento por parte de la *Independent Police Complaints Commission* en los términos previstos en la Sección 28 de la *Commissioners for Revenue and Customs Act de 2005*.
- Y, finalmente, cuando la persona a quien afecta la información que se pretende revelar consienta su divulgación o revelación.

Sin perjuicio de lo anterior, cualquier revelación de información realizada por los empleados del *HMRC* deberá respetar las premisas establecidas en el *Code of Practice on the Disclosure of Information*, una guía¹⁵⁷ aprobada por el *HMRC* para facilitar a sus empleados los parámetros que deben regir cualquier revelación de información realizada por los mismos en el marco de las Secciones 19 y 20 de la *Anti-Terrorism, Crime and Security Act de 2001*. Asimismo, deberán tenerse en cuenta las previsiones establecidas en la *Data Protection Act de 1998*, la *Human Right Act de 1998*, la *Public Interest Disclosure Act de 1998*, así como en la *Regulation of Investigatory Powers Act de 2000*, marco legal básico de la obtención y revelación de información por parte de los poderes públicos.

¹⁵³ Cfr. Sección 3 *Commissioners for Revenue and Customs Act 2005*. Con anterioridad a la integración del *Inland Revenue* y del *Customs and Excise* en un único Departamento, la obligación de confidencialidad y secreto estaba establecida en la Sección 6 de la *Taxes Management Act de 1970*, para los miembros del *Inland Revenue*, y en la *Official Secrets Act de 1989* para los empleados del *Customs and Excise*.

¹⁵⁴ Cfr. Subsección 2.a) *Commissioners for Revenue and Customs Act de 2005*.

¹⁵⁵ En tal caso, deberán tenerse en cuenta las previsiones establecidas en la Sección 20 de la *Commissioners for Revenue and Customs Act 2005*, sección en la que se delimitan los supuestos en que podrá entenderse que concurre el requisito previo del interés público como premisa para la revelación de información por parte de los empleados al servicio del *HMRC*. Fundamentalmente, son cuatro las razones de interés público que pueden dar lugar a la revelación de información en los términos que venimos estudiando: seguridad nacional, seguridad pública, salud pública y prevención o detección de delitos.

¹⁵⁶ Este sería el caso del requerimiento formulado por un Tribunal de Justicia, en el ámbito penal, a un *Commissioner* del *HMRC* para que facilitase la información obtenida en el desarrollo de una inspección fiscal (por ejemplo, movimientos de cuentas corrientes, posibles actividades de blanqueo de dinero mediante uso de sociedades interpuestas o situadas en paraísos fiscales, etc.) en relación a una persona que está siendo juzgada por tráfico de estupefacientes.

¹⁵⁷ Como se pone de relieve en el punto octavo del Capítulo I del *Code of Practice on the Disclosure of Information*, el *Code of Practice* no es una ley o una interpretación de la ley sino que únicamente pretende ser una guía para los empleados del Departamento en relación a la revelación de información que les pueda ser requerida bajo la *Terrorism, Crime and Security Act de 2001*.

En este contexto, la revelación de información relativa a los contribuyentes contraviniendo las citadas limitaciones así como la revelación errónea de cualquier información de la que disponga el empleado del *HMRC* es calificada de “delito” y se encuentra específicamente sancionada en la Sección 19 de la *Commissioners for Revenue and Customs Act de 2005*, sanción que puede llegar a ser una pena privativa de libertad¹⁵⁸. De acuerdo con la Subsección segunda de la misma, se entenderá que una persona comete una infracción si revela información relativa a una persona que resulta directamente identificada en dicha revelación o bien cuando aquélla pudiese ser deducida de la misma. Ahora bien, la persona a la que se le impute una infracción por revelación de información podrá conducir su defensa si puede probar que la revelación era legal o bien que la información revelada ya había sido hecha pública y, en consecuencia, era conocida por el público en general.

La importancia que en el ordenamiento británico se concede a la obligación de confidencialidad se pone de manifiesto en su propia duración en cuanto todo empleado público debe preservar la información que ha adquirido en el desarrollo de sus funciones incluso después de abandonar su cargo, función o empleo¹⁵⁹.

4.2. Conflictos de intereses

La incompatibilidad que puede producirse entre los intereses personales, patrimoniales y profesionales de aquel que ejerce funciones públicas y el interés general que representa en cuanto empleado de la Administración pública puede dar lugar a un conflicto de intereses que, de no resolverse, podría poner en cuestión la imparcialidad y honestidad del mismo y su propia objetividad en su modo de actuar.

En este contexto, resulta evidente que el empleado público al servicio de la Administración Tributaria debe evitar que sus intereses personales o patrimoniales entren en conflicto directo o aparente con el interés general que representa. En consecuencia, tan pronto como el empleado público detecte la existencia de un conflicto de intereses *actual, aparente o potencial*¹⁶⁰ deberá comunicarlo a su superior jerárquico, el cual deberá analizar el alcance del mismo y decidir sobre la conveniencia de trasladar la cuestión que constituye el objeto de dicho conflicto a otro empleado o, en su caso, imponer las condiciones necesarias, en cualquier caso de obligado cumplimiento, para su tratamiento por el mismo empleado que ha detectado y comunicado el conflicto.

4.2.1. Intereses personales

En este orden de ideas, la objetividad, imparcialidad y honestidad como valores deseables en el desarrollo de las tareas propias del empleado público podrían verse cuestionadas por la existencia de intereses personales que interfieran, directa o indirectamente, en el desarrollo de las tareas que le corresponden como tal. En términos generales, contravendría las normas de buena conducta relativas a los conflictos de intereses en el seno de la Administración tributaria británica cualquier vinculación personal, directa o indirecta, del empleado público con las cuestiones que pasan por sus manos como trabajador de la misma.

En concreto, y a la vista del propio *HMRC*¹⁶¹, tales valores quedarían en entredicho si un empleado, o sus amigos o familiares por recomendación de aquél, realizasen transacciones financieras o comprasen o vendiesen acciones de una empresa de la que disponen información, no accesible para el público en general, como consecuencia de su empleo en el *HMRC*. Asimismo, sería susceptible de generar un conflicto de intereses la intervención de un empleado del *HMRC* en la resolución o archivo de temas relativos a una organización o club del que sea asociado o miembro, así como la responsabilidad de decidir sobre un expediente relativo a liquidaciones de familiares, amigos u otras personas con las que exista una relación personal.

¹⁵⁸ En efecto, de acuerdo con la Subsección 4 de la Sección 19 de la *Commissioners for Revenue and Customs Act 2005*, la persona que revele información en los términos descritos en dicha sección podrá ser sancionada con una pena de cárcel no superior a dos años, con una multa inferior al “máximo establecido por ley” o bien con ambas a la vez.

¹⁵⁹ En este punto resultan especialmente significativas las Subsecciones 4.2.3 y 4.2.5 de la Sección 4.2 del Capítulo 4 del *Civil Service Management Code* cuando establecen que “los empleados públicos deberán observar el deber de confidencialidad incluso tras dejar de ser empleados de la Corona”, “no pudiendo publicar o emitir sus memorias personales recogiendo la experiencia desarrollada en su trabajo como empleado público”.

¹⁶⁰ Cfr. *Section RCHRG3.5 Code of Practice Guidance*.

¹⁶¹ Cfr. “What are conflict of interest?”, *Section RCHRG3.5 Code of Practice Guidance*, pág. 25.

Asimismo, también forman parte de este bloque las disposiciones relativas a la aceptación de regalos, atenciones, dádivas, cortesías y otros beneficios por parte de los empleados al servicio de la Administración tributaria¹⁶². En este contexto, el Código de Conducta del *HMRC* es muy claro: el empleado público no debe aceptar regalos que puedan poner en cuestión su objetividad e imparcialidad. A tal efecto, y con el fin de evitar los conflictos de intereses que pudiesen surgir entre sus deberes oficiales y sus intereses personales, los empleados del *HMRC* no deben aceptar regalos de terceros excepto que se trate de regalos aislados y de insignificante naturaleza tales como “calendarios o agendas”, “almuerzos de trabajo oficiales” o “participación en comidas anuales de organizaciones con las que mantenga un contacto laboral, tales como colegios profesionales”. En cualquier otro caso, la aceptación deberá ser previamente aprobada por el responsable del Departamento el cual, excepcionalmente, concederá tal posibilidad¹⁶³. En este punto resulta interesante destacar la existencia de un registro en cada una de las oficinas del *HMRC* en el que los empleados públicos deberán anotar los regalos recibidos, aunque se trate de regalos nimios o banales, cuyo importe supere las 25 Libras así como los regalos u ofrecimientos repetidos que hayan sido denegados por los mismos.

4.2.2. Intereses profesionales

La segunda de las cuestiones que reciben un tratamiento especial en el marco de los conflictos de intereses es la relativa al desarrollo de trabajos o actividades por parte de los empleados públicos de forma simultánea o posterior a su empleo en la Administración tributaria y los posibles conflictos que pudiesen surgir entre sus intereses profesionales como empleado público y los intereses derivados del ejercicio de tal actividad externa.

En este contexto, el ordenamiento británico muestra especial atención al desempeño de actividades por parte de los empleados públicos de manera simultánea o durante los dos años posteriores al abandono de las funciones públicas. En tales supuestos, deberán seguirse las previsiones establecidas en las *Working Time Regulations* así como en las *Rules on the acceptance of outside appointments by Crown Servants*. La filosofía que fundamenta ambas disposiciones es la de evitar cualquier influencia externa en la toma de decisiones del empleado público –caso que, con toda claridad, puede producirse cuando éste sigue prestando sus servicios al *HMRC*–, así como evitar la vulneración del importante deber de confidencialidad que preside la función pública, el cual podría verse especialmente afectado en relación a empresas de la competencia de la entidad en la que el empleado público ha sido contratado.

Aunque la idea general que preside esta materia es la compatibilidad para desarrollar tareas fuera de la función pública, lo cierto es que, en cualquier caso, la aceptación de un segundo empleo mientras se es funcionario público, sea en el Reino Unido o en el extranjero, pasa por la obtención del correspondiente permiso escrito del responsable directo del empleado en el seno del Departamento en el que desempeña sus funciones. La única excepción a esta regla general la integran los empleos de duración inferior a los tres meses, siempre que su ejercicio no suponga o pueda suponer un conflicto de intereses con el *HMRC* ni resulte incompatible con el cargo público desempeñado, ni, evidentemente, exista incompatibilidad horaria entre ambos.

En este orden de ideas, el Código de conducta del *HMRC* recoge un amplio listado de incompatibilidades profesionales, retribuidas o no, que bajo ningún concepto pueden ser desempeñadas por los empleados públicos al servicio de la Administración tributaria¹⁶⁴, de manera simultánea o durante los dos años posteriores al abandono de la función pública. Bajo la apariencia de permisividad, la lectura detenida de este apartado nos permite observar la existencia de estrictas limitaciones en el ejercicio de actividades externas a la función pública, incluso una vez ésta ha finalizado. Así, llama especialmente la atención la imposibilidad de trabajar como asesor fiscal en defensa de cualquier contribuyente que esté en negociación o apelación con el *HMRC* o respecto a cualquier tipo de declaración o liquidación que deba ser presentada al *HMRC* –únicamente quedan excluidas de esta

¹⁶² Section RCHRG3.7 Code of Conduct Guidance.

¹⁶³ A modo de ejemplo, el Código de Conducta del *HMRC*, hace referencia a aquellos supuestos en los que un organismo de relevancia efectúa un reconocimiento personal a un empleado público como gratificación de la larga y constructiva relación entre ambos al *final* de la misma.

¹⁶⁴ Cfr. “Work you cannot do”, Sección RCHRG3.11.1 *HMRC’s Code of Conduct Guidance*.

prohibición las declaraciones o liquidaciones que afectan al propio empleado pero no, en cambio, a su familia—, o bien como agente de seguros, prestamista o incluso como empleado para cualquier empresa que sea proveedora de servicios del HMRC o realice negocios con el mismo.

RELACIÓN DE NORMATIVA Y DOCUMENTACIÓN ADMINISTRATIVA

- CIVIL SERVICE:
 - *Civil Service Management Code (1993).*
 - *Civil Service Code (1996).*
(Annex A, Section 4.1, Chapter 4 of Civil Service Management Code).
 - *Seven Principles on Public Life (1995).*
(http://www.public-standards.gov.uk/about_us/seven_principles.htm).
- HER MAJESTY'S TREASURY DEPARTMENT
 - *Treasury's Code of Conduct.*
(http://www.hm-treasury.gov.uk/about/code_behaviour_and_values/cbv_index.cfm).
- HER MAJESTY'S REVENUE AND CUSTOMS:
 - *Commissioners for Revenue and Customs Act (2005).*
 - *Code of Conduct Guidance (2006).*
 - *Code of Practice on the Disclosure of Information.*
(http://www.hmrc.gov.uk/pdfs/cop_at.htm).
- GOBIERNO LOCAL:
 - GALES: *The Code of Conduct, Order (Qualifying Local Government Employees),* Wales, Order 2001.
 - INGLATERRA: *The Local Authorities (Model Code of Conduct),* England, Order 2001.
 - ESCOCIA: *Ethical Standards in Public Life, Scotland Act 2000.*
- COMMITTEE ON STANDARDS IN PUBLIC LIFE:
 - *Code of Practice for Members of the Committee on Standards in Public Life (2005).*
- HOUSE OF LORDS
 - *Code of Conduct together with The Guide to the Rules Relating to the Conduct of Members.*
- OFFICE OF THE COMMISSIONER FOR PUBLIC APPOINTMENT
 - *Code of Practice for Ministerial appointments to public bodies.*

BIBLIOGRAFÍA

COMMITTEE ON STANDARDS IN PUBLIC LIFE (1995): Standards in Public Life: First Report of Committee on Standards in Public Life, CM 2850-1, HMSO, Londres.

GARCÍA MEXÍA, P. (2001): Los conflictos de intereses y la corrupción contemporánea, Ed. Aranzadi, Cizur Menor.

GRAHAM, J.; O'CONNOR, W.; CURTICE, J. y PARK, A. (2003): Guiding Principles: Public Attitudes towards Conduct in Public Life, National Centre for Social Research.

O'DONELL, G. (2004): Financing Britain's Future. Review of the Revenue Departments.

ROZAS VALDÉS, J.A. "Revocación tributaria", en Homenaje a José Luis Pérez de Ayala (en prensa).

3. PROPUESTA DE CÓDIGO DE BUEN GOBIERNO DE LA ADMINISTRACIÓN TRIBUTARIA DEL ESTADO

En este apartado del estudio se presenta una propuesta de Código de Buen Gobierno de la Administración Tributaria del Estado (CBGATE). El documento que lo incluye se compone de dos grandes partes: la primera, tras íntegra reproducción de su Preámbulo, se dedica al comentario justificativo de todos y cada uno de los preceptos del Código propuesto, con especial hincapié en sus antecedentes históricos (si existieran), en sus correlatos de Derecho comparado (sobre todo norteamericanos y británicos, teniendo en cuenta el particular realce que de antemano ambos obtienen en este trabajo), y en sus relaciones con otras disposiciones del ordenamiento jurídico español, así como en su anclaje doctrinal. La segunda parte, que se inserta como Anexo, reproduce en su integridad, ya libre de comentarios, el texto del propuesto Código de Buen Gobierno de la Administración Tributaria del Estado.

Debe en este punto advertirse, aun cuando a primera vista parezca tautológico, que lo que se ha elaborado es simplemente un código ético o de conducta, y nada más que eso, es decir, un elenco de principios, que por esa su misma naturaleza no pueden ir más allá de la simple orientación a sus destinatarios acerca de la necesaria tendencia de sus actuaciones públicas. Pero estos principios tampoco pueden ir más allá porque un texto que pretendiera imponer, más que deberes abstractos al amparo de tales principios, obligaciones jurídicamente vinculantes, requeriría el recurso a fuentes normativas de incuestionable naturaleza jurídica. Con mayor concreción aún, esa intención exigiría en todo caso, e indiscutiblemente, el abrigo de una norma con rango de ley, si tenemos en cuenta que así lo exige la reserva de ley en favor del “estatuto de los funcionarios públicos” y de su “sistema de incompatibilidades y las garantías para la imparcialidad en el ejercicio de sus funciones” prevista en el artículo 103.3 de la Constitución. De ahí que sea precisamente la legislación general en materia de función pública y la especial relativa a las incompatibilidades, la que en lo esencial regula hoy en día esas obligaciones jurídicamente exigibles a los empleados públicos, entre ellos como es obvio a los de la Administración Tributaria del Estado, siendo esa legislación la que sería preciso modificar en el supuesto de estimarse oportuno, y sin que los principios que en el presente documento se recogen puedan ni deban en modo alguno entorpecer lo en dicha legislación dispuesto. Lo dicho no empece obviamente a que los principios aquí recogidos sí puedan y deban en cierta medida reforzar las disposiciones legislativamente establecidas, radicando justamente en ello su principal misión.

Consideraciones hasta cierto punto semejantes pueden formularse a propósito de la posibilidad, bien interesante a juicio de este equipo de trabajo, de que órganos del tipo del Consejo para la Defensa del Contribuyente asumieran en el futuro funciones directamente relacionadas con las materias objeto del Código de Buen Gobierno que aquí se expone; y decimos “directamente”, por cuanto es difícilmente discutible que las actuales funciones del mencionado Consejo están ya sobradamente relacionadas de modo indirecto con aquéllas: baste por ejemplo mencionar la esencial tarea de ese Consejo, defender al contribuyente, palpable muestra de que la Administración Tributaria tiene su principal razón de ser en el servicio al ciudadano, al contribuyente de modo más específico, siendo por otro lado el de servicio al ciudadano y al contribuyente el que este Código de Buen Gobierno consagra como su principio de apertura y por tanto capital. Ahora bien, la carencia del necesario rango normativo de este borrador de CBGATE lo hace manifiestamente inadecuado para encomendar función alguna a un órgano que, como el Consejo para la Defensa del Contribuyente, se encuentra regulado por un Real Decreto (2458/1996, de 2 de diciembre), una Resolución de la Secretaría de Estado de Hacienda (de 14 de febrero de 1997) y sendas Instrucciones (de la propia Secretaría de Estado de Hacienda, de 14 de febrero de 1997; y del Director del Servicio de Auditoría Interna de la Agencia Estatal de Administración Tributaria, de 11 de diciembre de 1998). De ahí que la posible asunción por el Consejo para la Defensa del Contribuyente de esas funciones directamente concernientes al buen gobierno de la Administración Tributaria del Estado, sea cuestión que indefectiblemente deba quedar al margen del presente borrador, sin perjuicio de que su elevado interés aconseje a buen seguro su estudio detenido en distinta y posterior ocasión.

Y hablábamos de “la carencia del necesario rango normativo” porque el que para este borrador de CBGATE proponemos es el bien modesto de una Resolución del Ministro de Economía y Hacienda por el que el mismo quedaría aprobado, siendo otra posterior Resolución, en este caso del Secretario de Estado de Hacienda, la que podría ordenar la publicación del CBGATE aprobado en el Boletín Oficial del Estado.

Última advertencia preliminar: un Código de las características del que presentamos se engarza en esa suerte de medidas que, como después comentaremos, rebasa por su amplitud los estrechos márgenes de la norma jurídica, para enlazar con enfoques –entre otros y sobre todos– educativos de la problemática suscitada por el abuso del poder público. De ahí el acierto del Instituto de Estudios Fiscales a la hora de proponer que las conclusiones y frutos del presente trabajo se difundan con amplitud, tanto a través de una publicación como de un seminario especializado. Estimamos no obstante, principalmente por la razón mencionada, que la implantación ideal de un Código de esta naturaleza exigiría la simultánea puesta en marcha de un Programa Integral de Formación en Ética Pública de los empleados públicos al servicio de la Administración Tributaria del Estado, que brindara a los mismos la ocasión de analizar, desde perspectivas teórico-prácticas, y con recurso a las más avanzadas técnicas de metodología docente, los valores que han de guiar su Administración, los problemas ético-públicos que la aquejan o pueden llegar a hacerlo y los mecanismos ordinariamente dispuestos para hacer frente a tales problemas.

1. EL PREÁMBULO

Texto literal:

Preámbulo

No ha sido frecuente en la tradición de la Administración española el disponer de códigos éticos o de conducta con el sentido en que tal expresión ha sido clásicamente entendida en otros países, por excelencia en el mundo anglosajón. Sí lo ha sido desde luego apelar en positivo a determinados deberes de nuestros cargos y empleados públicos, como hacía por ejemplo el artículo 6 de la Constitución de 1812, al imponer a los españoles la obligación de ser “justos y benéficos”, o vienen haciendo desde hace decenios nuestras leyes administrativas; siguiendo esta estela, la Ley 6/1997, de 14 de abril proclama en su artículo 4 el “principio de servicio a los ciudadanos” como norte esencial de la actividad de la Administración. Mas falta en nuestra tradición esa idea de códigos éticos o de conducta que los identifica con elencos más o menos amplios de principios recopilados en aras de favorecer el acomodo de los cargos y empleados públicos a los mismos, con base, y aquí radica su más genuina especificidad, en una doble intención: la de la persuasión, que no disuasión, del cargo o empleado público, con vistas a convencerlo en su fuero interno acerca de la bondad intrínseca de los comportamientos que han de perseguirse; y la del incentivo, que no sanción, de manera que el cargo o empleado público se afane en el cumplimiento de sus deberes, no tanto por temor al castigo por infringirlos, cuanto por apego autónomo hacia los mismos. En efecto, en nuestro país, los deberes éticos de los cargos y empleados públicos, sin perjuicio de las aisladas apelaciones en positivo a los mismos, han venido siendo tradicionalmente recogidos en normas de naturaleza jurídica en absoluto discutible (a diferencia del soft law encarnado por los códigos éticos), en consecuencia sezonadas por el rigor de la disuasión que en todo caso el Derecho conlleva, máxime en los casos en que, a resultas de su incumplimiento, es precisa la imposición de alguna sanción: así ha sucedido de hecho con aquellas disposiciones jurídicas más afines a los deberes de los agentes públicos, cuales son las relativas a las incompatibilidades, tanto de los cargos como de los empleados públicos españoles, unas y otras indefectiblemente acompañadas por sendos regímenes disciplinarios orientados a garantizar en último extremo su respeto.

Siendo todo ello cierto, no lo es empero menos que, si bien muy recientemente, España ha comenzado a incorporar a su ordenamiento códigos éticos o de conducta en el sentido recién mencionado, y ello tanto como consecuencia de los avances en esta materia de países especialmente señeros, como de iniciativas en el mismo sentido adoptadas por prestigiosos organismos internacionales (sobre todo, las Naciones Unidas, la OCDE o el Consejo de Europa), sin que pueda en modo alguno olvidarse la contribución en esa misma línea del “buen gobierno” de grandes actores privados a escala mundial o nacional. Éste es sin duda el caso del llamado Código de Buen Gobierno de los miembros del Gobierno y de los altos cargos de la Administración General del Estado, aprobado mediante Acuerdo del Consejo de Ministros de 18 de febrero de 2005, claramente inscrito en esta línea de acción. Y en este mismo contexto debe también citarse el Acuerdo del Consejo de Ministros de 25 de febrero de 2005, en cuanto ordena al Ministerio de Economía y Hacienda la elaboración de un código de buenas prácticas para las empresas públicas, que asuma las directrices sentadas en la materia por la OCDE, y al Ministerio de Administraciones Públicas la confección de un código de conducta para los funcionarios competentes en procesos de contratación pública. Tanto la Ley de regula-

ción de los conflictos de intereses de los miembros del Gobierno y de los altos cargos de la Administración General del Estado como el hoy por hoy sólo proyectado Estatuto Básico del Empleado Público alinean sin duda sus principios éticos y de conducta, mutatis mutandis en lo que a los empleados públicos se refiere, con los previamente sentados en el citado Código de Buen Gobierno, de aplicación a los miembros del Gobierno y a los altos cargos de la Administración General del Estado.

Éste es pues el marco en el que se inserta el presente Código de Buen Gobierno de la Administración Tributaria del Estado, articulado en un Punto Primero “Ámbito de aplicación”, un Punto Segundo “Principios éticos y de conducta” y un Punto Tercero “Cumplimiento del Código”.

Comentario:

El Preámbulo se esfuerza por engarzar el CBGATE en la historia jurídico-administrativa de nuestro país y de su ordenamiento de raigambre jurídica continental, por ende claramente ayuno de antecedentes normativos equiparables, así como por enlazar el presente CBGATE con las más recientes iniciativas gubernamentales en la materia, ya sí decididamente encaminadas a objetivos comunes a los de nuestro Código.

2. EL ÁMBITO DE APLICACIÓN

Tenor literal:

Primero. Ámbito de aplicación

1. El presente Código será de aplicación a la totalidad de los empleados públicos, ya sean funcionarios, ya personal laboral, al servicio de la Administración Tributaria del Estado.

2. Este Código no será de aplicación a los miembros del Gobierno o altos cargos responsables de la Administración Tributaria del Estado, respecto de quienes regirá el Código de Buen Gobierno de los miembros del Gobierno y de los altos cargos de la Administración General del Estado, aprobado mediante Acuerdo del Consejo de Ministros de 18 de febrero de 2005.

3. A los efectos del presente Código, se entenderá por Administración Tributaria del Estado la Agencia Estatal de Administración Tributaria y la Secretaría General de Hacienda, ambas dependientes de la Secretaría de Estado de Hacienda y Presupuestos.

Comentario:

Los miembros del Gobierno y altos cargos responsables de la Administración Tributaria del Estado se encuentran *ex ante* incluidos en el ámbito de aplicación del Código de Buen Gobierno de los miembros del Gobierno y altos cargos de la Administración General del Estado, aprobado mediante Acuerdo del Consejo de Ministros de 18 de febrero de 2005. De ahí que resulte imprescindible excluirlos del ámbito del CBGATE, que por ende ciñe su aplicación a los empleados públicos, ya funcionarios, ya personal laboral, al servicio de la Administración Tributaria del Estado.

Por otra parte, la definición de Administración Tributaria del Estado por la que se opta pretende incluir únicamente aquellos órganos que, estando encuadrados en el Ministerio de Economía y Hacienda, y más concretamente en la Secretaría de Estado de Hacienda y Presupuestos, son directamente competentes en materia tributaria. El objetivo es configurar un código ético específico para el personal al servicio de dichos órganos, y que a la vista de sus particularidades, concrete los deberes éticos de alcance más general ya previstos en la legislación vigente, junto a los que también en su día pudiera incluir el futuro Estatuto Básico del Empleado Público.

3. LOS PRINCIPIOS ÉTICOS Y DE CONDUCTA

Tenor literal:

Segundo. Principios éticos y de conducta

1. Servicio y confianza

Los empleados públicos al servicio de la Administración Tributaria del Estado actuarán en todo momento en exclusivo servicio de los ciudadanos y de los contribuyentes, siendo conscientes de que el origen de sus competencias y la legitimidad de su ejercicio radican en la confianza de los españoles.

Comentario:

Es común en España establecer la base de legitimidad de las Administraciones en el servicio a los ciudadanos. No podría ser de otro modo, y así lo hace de hecho la propia Constitución, en su artículo 103.1, al proclamar que “la Administración Pública *sirve* con objetividad los intereses generales”. Es especialmente oportuno por tanto abrir este Código con un principio de tanta importancia, quizás el de mayor realce, en su naturaleza de valor subsuntivo de todos los demás en él contenidos.

Con todo, la plena percepción de la importancia del valor de servicio exige su complemento con el que hemos establecido en este Código como su correlato, cual es el de la confianza ciudadana. En países de honda raigambre democrática como son algunos de los anglosajones (EEUU y Reino Unido a la cabeza), este principio suele sintetizarse en una frase repetida *ad nauseam* en textos relacionados con estas materias: *a public office is a public trust*, el cargo o puesto público es expresión de la confianza pública o ciudadana. Uno de los más influyentes códigos éticos existentes en el panorama comparado, el estadounidense *Code of Ethics for Government Service* de 1958, aplicable a la totalidad de los poderes públicos norteamericanos, cierra justamente su decálogo principal con esa misma expresión. Con ello se viene a subrayar, y así lo hacemos también desde aquí, que el servicio de los cargos y empleados públicos a los ciudadanos, en nuestro caso también a los contribuyentes, constituye de alguna manera la respuesta natural e inevitable de éstos a esa confianza que los ciudadanos depositan en ellos al conferirles sus potestades, ya a través de la vía democrática de la elección, ya a través de la no menos democrática (en cuanto implica una bien tangible expresión del principio de igualdad) de la acreditación ante las autoridades competentes de su mérito y su capacidad. La confianza, al fin y al cabo, constituye el ingrediente esencial de la idea de representación política, a su vez base misma de funcionamiento de nuestras modernas democracias, necesaria, inevitable y fundamentalmente representativas.

Tenor literal:

Segundo. Principios éticos y de conducta

2. Respeto a la Constitución y al principio de igualdad

Los empleados públicos al servicio de la Administración Tributaria del Estado desempeñarán sus funciones con pleno respeto a la Constitución y al resto del ordenamiento jurídico, en especial a la legislación aplicable en materia tributaria, evitando asimismo toda actuación que pueda producir discriminación por razón de nacimiento, raza, sexo, religión, opinión o cualquier otra condición o circunstancia personal o social.

Comentario:

Resulta imprescindible anclar este Código, casi desde su mismo comienzo, en la norma suprema de nuestro ordenamiento y en la legislación que de ella deriva su validez. Puede y debe hacerse por razones puramente técnico-jurídicas, *per se* suficientes (basta citar como base el principio de legalidad consagrado en el artículo 9.3 de la Constitución, o la necesidad de que la Administración Pública actúe “con sometimiento pleno a la ley y al Derecho”, artículo 103.1 de la Constitución). Aunque también porque es en la Constitución donde igualmente encuentran su último acomodo los principios de este propio Código, ya de modo expreso, ya implícitamente: una Constitución como la nuestra encarna en fin de cuentas el punto de encuentro entre pensamientos, ideas y opiniones por esencia diversas, que sin ella no confluirían sencillamente en ningún otro, constatado el carácter tan marcadamente abierto y plural de una sociedad occidental contemporánea cual es la española. En nuestro país y también en democracias más antiguas que la nuestra, o de vigencia menos interrumpida, si se quiere, el acatamiento y más aún el afecto por la Constitución opera como capital instrumento de vertebración para una gobernanza ética (y recuérdese por ejemplo que la mejor dogmática constitucional germana ha fundado en la idea de *Verfassungsgefühl* o sentimiento constitucional, el más genuino elemento de legitimidad y legitimación de un texto constitucional).

A partir de aquí, no parece difícil justificar la mención de la discriminación en nuestro Código, si tenemos en cuenta su expresa proscripción en el artículo 14 de la Constitución, con idéntica literalidad.

Todo ello se hace también en el Código de Buen Gobierno de los miembros del Gobierno y de los altos cargos de la Administración General del Estado (en adelante, CBG-MGAC).

Tenor literal:

Segundo. Principios éticos y de conducta

3. Orientación estratégica al interés público

Con una orientación estratégica más que de detalle, los empleados públicos al servicio de la Administración Tributaria del Estado perseguirán el interés público en su actuación, al margen de cualquier otro factor exclusivamente favorable a situaciones personales, familiares, corporativas, clientelares o cualesquiera otras que puedan colisionar con este principio.

Comentario:

La obvia necesidad de servicio al interés general es a su vez fuente de este principio, que tiene un claro correlato en el ya citado CBG-MGAC. Añadimos aquí, eso sí, el adverbio “exclusivamente”, para resaltar que sólo resultarán a nuestro juicio inaceptables aquellas actuaciones de empleados públicos de la Administración Tributaria del Estado que únicamente resulten favorables respecto de determinadas situaciones privadas, sin que sus beneficios puedan en modo alguno extrapolarse a un plano más general. La razón de dicha inclusión radica en que, como es natural, toda actuación pública orientada al interés general reporta ventajas de mayor o menor calado a favor de personas o colectividades concretas, no debiendo obviamente constituir este hecho desdoro alguno para su legitimidad.

También nos ha parecido oportuna la inclusión en este principio del adjetivo “estratégica”, en la medida en que el empleado público de la Administración Tributaria del Estado deberá desarrollar su función con la vista puesta, no tanto en la inmediata conveniencia de que el Fisco pueda resultar beneficiado económicamente o de otro modo directo con la misma, cuanto en la última necesidad de prestar el mejor servicio posible al ciudadano y al contribuyente, llegando si es preciso a reconocerle sus derechos si en justicia y a juicio del empleado público le asisten, aunque ello pueda llegar a suponer un menoscabo económico para la Hacienda Pública. Aun cuando es ambicioso, el objetivo es el de avanzar en la visión de la Hacienda por el contribuyente como un ente intrínsecamente empeñado en el bien común, y no sólo encelado en una recaudación en todo caso ciega a las circunstancias particulares de aquél, al que en consecuencia no quedaría otra alternativa que la de temer. Un objetivo por cierto que, a la vista de los bien aceptables resultados de las más recientes encuestas del Centro de Investigaciones Sociológicas (CIS) sobre *Opinión Pública y Política Fiscal* (julio de 2005), no se revela en manera alguna quimérico. Por lo demás, y de ir consiguiéndose, tal objetivo coadyuvaría sin duda a una paulatinamente mayor aceptación por el contribuyente de su deber constitucional de afrontar los tributos, ya de por sí notable, como la encuesta citada demuestra, y propiciaría el ir consiguiendo que sólo terminaran por temer la acción de la Administración Tributaria quienes, por su ánimo defraudatorio, tuvieran algo que ocultar. Según la mencionada encuesta del CIS, nada menos que un 69,8 % de los ciudadanos considera que el servicio de información y atención al contribuyente prestado por la Agencia Tributaria es bueno, frente a un 22,8 % que lo cree regular y tan sólo un 6 % que lo valora como malo: estamos persuadidos de que la Administración Tributaria española mejoraría ésta su ya de por sí satisfactoria imagen ante los ciudadanos si su acción cotidiana llegara a impregnarse de lleno de este espíritu tan ancilar como estratégico.

Tenor literal:

Segundo. Principios éticos y de conducta

4. Lealtad a la institución y a los ciudadanos

Los empleados públicos al servicio de la Administración Tributaria del Estado se esforzarán por no confundir en su actuación el interés público con el específico interés de la Administración Tributaria del Estado, sin perjuicio de la debida lealtad a ésta.

Comentario:

Los empleados públicos al servicio de la Administración Tributaria del Estado deben inquestionable lealtad a la institución u órgano del que dependen, ya sea la Agencia Estatal de Administración Tributaria, ya la Secretaría General de Hacienda. Ello viene a suponer que su acción ordinaria, incluso por mor de otros principios recogidos en este Código, cuales puedan ser los de eficacia, obediencia, jerarquía o profesionalidad, debe en todo caso supeditarse a las instrucciones recibidas de sus superiores, a su vez encuadradas en las líneas de actuación propias de la organización. Con

todo, las consideraciones relativas al enfoque estratégico del interés público que se acaban de exponer a propósito del principio anterior despliegan también aquí toda su virtualidad, de ahí que por supuesto deban servir igualmente para justificar el deber del empleado público al servicio de la Administración Tributaria del Estado de no identificar siempre y en toda circunstancia el interés público con el específico de la Administración, tenga o no carácter recaudatorio. Como fundamento para ello, nos remitimos al comentario del principio anterior.

Tenor literal:

Segundo. Principios éticos y de conducta

5. Desviación de poder

Los empleados públicos al servicio de la Administración Tributaria del Estado ejercerán sus competencias en orden al concreto y determinado fin para el que fueron concebidas, evitando en todo caso la desviación de poder.

Comentario:

La íntima relación de la desviación de poder con el uso ético del poder aconseja la inclusión en este Código de un precepto de este tipo, por más que no se trate sino de la concreción de principios consagrados en el propio texto constitucional, cuyo artículo 9.3 prescribe la “interdicción de la arbitrariedad”, mientras que su artículo 106.1 supedita la actuación administrativa “a los fines que la justifican”, en implícita alusión a la desviación de poder.

Tenor literal:

Segundo. Principios éticos y de conducta

6. Imparcialidad y objetividad

Los empleados públicos al servicio de la Administración Tributaria del Estado adoptarán sus decisiones con objetividad, sin dispensar tratos de favor, privilegios o ventajas injustificadas, ni recibirlos por parte de personas físicas o jurídicas privadas o públicas. Asimismo, los empleados públicos al servicio de la Administración Tributaria del Estado actuarán con imparcialidad, absteniéndose de influir en la agilización o resolución de trámite o procedimiento administrativo sin justa causa y, en ningún caso, cuando ello suponga un privilegio en beneficio propio o de su entorno familiar y social inmediato o cuando suponga un menoscabo de los intereses de terceros.

Comentario:

Volvemos a encontrarnos con principios establecidos constitucionalmente, en concreto en el artículo 9.3, pues la interdicción de la arbitrariedad obliga entre otras cosas a la más estricta imparcialidad (nada más arbitrario que hacer acepción de personas en la adopción de decisiones públicas); y en el trascendental artículo 103.1, que expresamente exige de la Administración el servicio de los intereses generales “con objetividad”. El precepto que ahora comentamos trata de concretar ambos respecto del empleado público al servicio de la Administración Tributaria del Estado, de modo muy semejante a como lo hace para miembros del Gobierno y altos cargos el citado CBG-MGAC: por un lado, impidiendo con carácter general la gestión interesada de los asuntos públicos, como consecuencia de la expectativa de favores por parte del agente público, del agente privado o de ambos; por otro, proscribiendo resoluciones injustificadas de expedientes en detrimento del interés público, así como una práctica harto frecuente entre nosotros, cual es el en ocasiones llamado “engrase de la maquinaria”, es decir, la aceleración frente al ritmo ordinario de determinados expedientes en beneficio de su interesados o de terceros.

Tenor literal:

Segundo. Principios éticos y de conducta

7. Percepción de regalos, servicios o liberalidades

A) *Los empleados públicos al servicio de la Administración Tributaria del Estado rechazarán cualquier regalo, servicio en su favor o liberalidad que, por ir más allá de los usos sociales y de cortesía, pueda condicionar el desempeño de sus funciones, sin perjuicio de lo establecido en el Código Penal. Los obsequios de mayor significación de carácter institucional se incorporarán, previa*

declaración de su percepción por parte del empleado público, al patrimonio del Estado, en los términos previstos en la legislación sobre el Patrimonio de las Administraciones Públicas.

B) Los empleados públicos al servicio de la Administración Tributaria del Estado rechazarán en especial regalos, servicios en su favor o liberalidades repetidamente realizados por una misma persona física o jurídica.

Comentario:

La percepción de regalos, servicios o liberalidades por parte de los empleados públicos al servicio de la Administración Tributaria del Estado motiva, en caso de llevarse a cabo, que éstos puedan verse incluso seriamente condicionados en el desarrollo de sus funciones. De ahí la necesidad de regular la percepción de regalos, servicios o liberalidades, conforme a criterios como los siguientes: primero, implantación paulatina (comenzando, por ejemplo, por los cargos de mayor responsabilidad y concluyendo con los funcionarios de menor nivel), habida cuenta del gran arraigo social que suelen tener estas prácticas; segundo, esas normas, más que reprimir conductas erróneas, de cuyos supuestos más graves se ocupan los Códigos Penales (también el español, como es notorio), debieran servir de apoyo al cargo o funcionario público, habiendo de consistir esencialmente en deberes de declaración de los regalos que se le hubieran ofrecido, siempre y cuando superasen ciertas cuantías mínimas; tercero, la autoridad competente estaría facultada para permitir o no la aceptación del obsequio al cargo afectado y, en caso de denegarle la posibilidad de aceptarlo, dispondría su destino al Patrimonio estatal. Las escasísimas, poco relevantes y casi desconocidas normas españolas en esta materia llevan décadas en desuso: con alguna excepción autonómica, en concreto un decreto cántabro de 1991, se trata básicamente de una orden ministerial de la etapa franquista (1958), que prohíbe a los funcionarios la percepción de regalos de Navidad (*sic*). En este contexto, el CBG-MGAC ha venido a aportar un embrión de regulación no penal sobre regalos que, por cierto, se basa en postulados muy semejantes a los expuestos en este comentario, y a su vez reflejados en el precepto que para nuestro borrador de Código proponemos, sin otro añadido (tomado de la experiencia británica) que el de sugerir en todo caso el rechazo por los empleados públicos al servicio de la Administración Tributaria del Estado de reiterados obsequios o servicios en su favor, por humildes que pudieran ser, siempre que procedieran de una misma fuente, dada la mella que podrían terminar por provocar en sus destinatarios.

Tenor literal:

Segundo. Principios éticos y de conducta

8. Integridad y conflictos de intereses

A) Los empleados públicos al servicio de la Administración Tributaria del Estado evitarán contraer obligaciones económicas o de otro tipo con personas físicas o jurídicas, que impliquen el riesgo de plantear conflictos de intereses con su puesto público. A estos efectos, se entenderá que existe conflicto de intereses cuando los empleados públicos al servicio de la Administración Tributaria del Estado intervengan en decisiones relacionadas con asuntos en los que confluyan a la vez intereses de su puesto público e intereses privados, propios o de su entorno familiar y social directo.

B) Al hilo de un procedimiento en curso, los empleados públicos al servicio de la Administración Tributaria del Estado declararán, ante su inmediato superior, cualquier interés privado, propio o de su entorno familiar y social directo, que pudiera tener relevancia en el mismo.

C) De conformidad con lo dispuesto en la legislación sobre régimen jurídico de las Administraciones Públicas, los empleados públicos al servicio de la Administración Tributaria del Estado deberán abstenerse de tomar parte en aquellos procedimientos sobre los que tengan un interés privado, propio o de su entorno familiar y social directo.

D) Con carácter general, los empleados públicos al servicio de la Administración Tributaria del Estado respetarán en todo momento la legislación sobre incompatibilidades y conflictos de intereses que les sea aplicable.

Comentario:

Es sin duda en los EEUU donde la trascendencia de los conflictos de intereses como problema ético ha venido siendo más larga y concienzudamente contrastada, en particular desde los años sesenta del siglo XX. Más concretamente, la conducta que deriva en conflicto de intereses se



reputa en los EEUU como un comportamiento "de riesgo", a diferencia de las más toscas variedades de corrupción (así el soborno, por ejemplo, tipificado penalmente como cohecho entre nosotros); de ahí que, a diferencia de la legislación que regula esas toscas conductas, de naturaleza penal y de finalidad primordialmente represiva, la legislación sobre los conflictos de intereses sea más ambiciosa, pues a pesar de presentar también naturaleza criminal, es de finalidad esencialmente preventiva (de ahí la mayor lenidad de sus penas), al dirigirse a "evitar la tentación" que el conflicto brinda al cargo o funcionario público, e incluso a impedir la mera apariencia de conflicto de intereses. En palabras de la más clásica doctrina norteamericana, la normativa sobre conflictos de intereses constituiría todo un "artículo de lujo", un instrumento legal que sólo se podría permitir una sociedad como la norteamericana, por haber superado la generalización de los más burdos episodios de corrupción.

Por el contrario en Europa, el problema ético de los "conflictos de intereses" apenas ha sido percibido hasta bien entrados los noventa del pasado siglo: de hecho, y por limitarnos al plano supranacional, sólo el llamado "Código-modelo de conducta para los agentes públicos" aprobado por el Consejo de Europa en mayo de 2000 comenzó a incluirlo como objeto de regulación, y también de definición ("un conflicto de intereses nace de una situación en la que un agente público tiene un interés personal que influya o aparente influir sobre el ejercicio imparcial y objetivo de sus funciones públicas"). Nada de lo dicho significa, más atrás lo advertíamos, que muchos ordenamientos jurídicos europeos no hayan venido haciendo frente desde antiguo a los problemas que tales conflictos plantean: en fin de cuentas, la "legislación sobre conflictos de intereses" puede considerarse el correlato de la "legislación en materia de incompatibilidades", sin que ello sea óbice para que la técnica de la incompatibilidad se emplee con fines adicionales al de la regulación de los conflictos de intereses.

Ahora bien, y en lo que a España respecta, las cosas acaban de empezar a cambiar. Primero, porque el CBG-MGAC ya incluye las conductas que derivan en conflictos de intereses entre las que los miembros del Gobierno y altos cargos deben evitar en el ejercicio de sus funciones: el apartado dedicado al problema en dicho Código ha sido además el modelo para el precepto de nuestro Código que en este momento comentamos. Y segundo, porque la Ley 5/2006 de 10 de abril, de regulación de los conflictos de intereses de los miembros del Gobierno y de los altos cargos de la Administración General del Estado, ya desde su mismo título, como se ve, afronta de lleno el problema.

En cuanto al concreto precepto que ahora debemos comentar, añadimos las siguientes ideas: primera, se incluyen como "intereses privados", tanto los de naturaleza económico-financiera, como los de cualquier otra índole, al no restringirse de antemano su alcance, y ello por más que resulte obviamente más complejo detectar o estimar esos últimos. Segunda, los deberes previstos en este precepto deben entenderse siempre sin perjuicio de las reglas sobre abstención previstas en el artículo 28 de la Ley 30/1992, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común; y de la normativa sobre incompatibilidades establecida en la Ley 53/1984, sobre incompatibilidades del personal al servicio de la Administración del Estado, y demás legislación en la materia.

Tenor literal:

Segundo. Principios éticos y de conducta

9. Actividades de lobby e influencia

A) *Con ocasión de sus contactos, bien con personas físicas o entidades dedicadas a actividades de lobby por cuenta de terceros, bien con personas o entidades directamente interesadas en la promoción de sus propios productos o servicios, los empleados públicos al servicio de la Administración Tributaria del Estado se abstendrán de toda conducta que contravenga lo dispuesto en el presente Código o en cualquier disposición legal.*

B) *En particular, los empleados públicos al servicio de la Administración Tributaria del Estado evitarán conceder acceso o tratamiento privilegiado a personas físicas o entidades dedicadas a actividades de lobby por cuenta de terceros, o a personas o entidades directamente interesadas en la promoción de sus propios productos o servicios. A estos efectos, se entenderá por acceso o tratamiento privilegiado aquél que implique una discriminación respecto del que el empleado público al servicio de la Administración Tributaria del Estado ordinariamente concede a cualquier otra persona o entidad que lo pretenda.*

Comentario:

El *lobby* en defensa de intereses de terceros o la influencia en promoción de productos o servicios propios, muy a pesar de su en ocasiones pésima “prensa”, es evidentemente actividad imprescindible para toda entidad que actúe en el mercado. Más allá de esta consideración fáctica, ordenamientos como el norteamericano no dudan en conectar su ejercicio con el de algunas de las libertades públicas esenciales, la de expresión especialmente. Con todo, el *lobby* y la influencia en beneficio de la propia actividad puede suscitar problemas de índole ética, en tanto y en cuanto se ejerza en condiciones discriminatorias respecto de otros agentes, en principio facultados a ponerlo en práctica en condiciones de igualdad general; y en tanto y en cuanto termine por implicar, normalmente a resultas de ese trato discriminatorio, beneficios de cualquier naturaleza para el agente público que propicia la discriminación.

Precisamente en esos fines encuentra su justificación el precepto ahora comentado, al contemplar con carácter general la necesidad de respeto de los principios del Código desde el concreto prisma del *lobby* o la influencia, y al pretender evitar tratamientos privilegiados respecto de agentes privados que llevan a cabo esta suerte de actividades.

Tenor literal:

Segundo. Principios éticos y de conducta

10. Cortesía y respeto

A) *Los empleados públicos al servicio de la Administración Tributaria del Estado tratarán con cortesía, respeto y consideración a los contribuyentes. Este trato se hará extensivo a los superiores, compañeros y subordinados.*

B) *Los empleados públicos al servicio de la Administración Tributaria del Estado ejercerán sus funciones de modo razonable, estando en general tan dispuestos a reconocer los derechos del contribuyente como lo estén para proteger los intereses de la Administración.*

C) *En caso de que, en el ejercicio de sus funciones, un empleado público al servicio de la Administración Tributaria del Estado recibiera una propuesta de actuación contraria a los principios del presente Código procedente de un contribuyente, la relación con éste se interrumpirá de inmediato, debiendo el empleado público al servicio de la Administración Tributaria del Estado informar a su inmediato superior a la mayor brevedad posible, y evitando tratar del asunto sin necesidad con ninguna otra persona.*

Si la propuesta procediera de un superior, sea o no el inmediato, de un compañero o de un subordinado, el empleado público al servicio de la Administración Tributaria del Estado procederá de idéntico modo, si bien en este caso la información deberá ponerse en conocimiento de la Inspección General del Ministerio de Economía y Hacienda.

D) *Los empleados públicos al servicio de la Administración Tributaria del Estado se abstendrán de interferir en modo alguno en la vida privada de sus superiores, compañeros y subordinados.*

Comentario:

El hilo conductor de este principio es nuclear en Administraciones tributarias de referencia, como por ejemplo la norteamericana, donde recibe la denominación de “deber de probidad y justicia” (*duty of fairness and justice*) o la británica, donde el término respeto es utilizado para resumir el conjunto de valores que el ciudadano espera encontrar en todo empleado público (“*focussing on Results; valuing Everyone; Showing integrity; developing Professionalism; managing Effectively; Communicating well and Thinking strategically: RESPECT*”). Entre nosotros, resulta plenamente coherente con el deber de servicio al interés general que más atrás comentábamos: en realidad, y es notorio, el de cortesía y respeto para con el contribuyente, el superior, el compañero o el subordinado no es más que una consecuencia de aquél más genérico deber.

También a modo de consecuencia de un más genérico deber, opera el de razonabilidad previsto en este apartado, al exigir del empleado al servicio de la Administración Tributaria del Estado la disposición para reconocer los derechos del contribuyente en la misma medida que para proteger

los intereses de la Administración. Efectivamente, nos encontraríamos aquí con un deber en cierta manera subsidiario del más amplio y ya citado de orientación estratégica al interés público, cuyos comentarios resultan plenamente aplicables también en este lugar.

En cuanto a que una propuesta de actuación contraria a los principios del presente Código determine la inmediata interrupción de la relación con el contribuyente o el superior, compañero o subordinado del empleado público en cuestión, se trata de una pauta de conducta frecuente también en Administraciones tributarias como la estadounidense, y entendemos que plenamente justificada en la conveniencia de emplear medidas que arrojen el mayor grado posible de transparencia sobre situaciones conflictivas efectiva o potencialmente. Mientras que la existencia en el seno del Ministerio de Economía y Hacienda (dependiente de su Subsecretaría) de la Inspección General del Ministerio de Economía y Hacienda, con funciones paralelas a las desarrolladas para el resto de la Administración General del Estado por la Dirección General de Inspección, Evaluación y Calidad de los Servicios, encuadrada en el Ministerio de Administraciones Públicas, aconseja encomendar a aquélla la labor de recepción de las posibles denuncias a que el precepto comentado se refiere.

El deber de preservar la vida privada de superiores, compañeros o subordinados está por otro parte previsto en códigos semejantes al aquí propuesto de países como el Reino Unido, sin perjuicio, como es obvio, de su regulación entre nosotros al socaire del derecho fundamental a la intimidad (artículo 18 de la Constitución).

Tenor literal:

Segundo. Principios éticos y de conducta

11. Veracidad

Los empleados públicos al servicio de la Administración Tributaria del Estado respetarán en toda circunstancia la verdad en el cumplimiento de sus funciones, evitando realizar declaraciones verbales o escritas falsas, o que induzcan a engaño, en materias de interés público, y ello tanto en sus relaciones con los contribuyentes como con sus superiores, compañeros o subordinados.

Comentario:

De modo paralelo a como el deber de veracidad puede emparentarse con otros más genéricos como los de objetividad, integridad u honradez, conductas del tipo de las falsedades o falsificaciones, pueden ponerse en relación con actos abusivos en el ejercicio del poder público: así, si la veracidad en el cumplimiento de las funciones públicas es el necesario resultado de un desempeño objetivo, íntegro y honrado de éstas, la falsedad o la falsificación son, no sólo el resultado, sino también muy a menudo el medio del que se vale un empleado público motivado por fines subjetivos, parciales o corruptos.

Es la conciencia acerca de todo ello, entendemos, la que ha llevado a algunos organismos públicos británicos a prever disposiciones semejantes a la aquí propuesta en sus correspondientes códigos de conducta.

Tenor literal:

Segundo. Principios éticos y de conducta

12. Accesibilidad y transparencia

Los empleados públicos al servicio de la Administración Tributaria del Estado desempeñarán sus funciones con accesibilidad y transparencia, proporcionando información al contribuyente en la mayor medida posible y facilitándole el acceso a la documentación administrativa a que tenga derecho.

Comentario:

Los beneficios de la publicidad y la transparencia en la gestión de los asuntos públicos comenzaron a experimentarse por los ordenamientos jurídicos más avanzados ya desde los años sesenta del pasado siglo, merced a normas que, bien facilitan el acceso público a archivos y registros de la Administración, sin perjuicio de ciertas exenciones (como sucede en España); bien exigen que los cargos y funcionarios públicos celebren sus sesiones de trabajo en sesión pública (siempre que concurran determinadas condiciones), o al menos desarrollen trámites de audiencia ciudadana en la

elaboración de su normativa (como en este último supuesto también sucede en nuestro país). Re-cuérdese además que el CBG-MGAC resalta el valor de la transparencia como meta de actuación, concretado en la necesidad de que los destinatarios de ese Código preserven en todas sus actuaciones el principio de información ciudadana.

Las exenciones habitualmente previstas para el acceso público a archivos y registros suelen consistir en la necesidad de preservar valores como la seguridad y defensa del Estado, la averiguación de los delitos o la intimidad de las personas, entre otros posibles (éste es esencialmente el contenido del art. 105 b) de nuestra Constitución).

Debe por fin señalarse que instrumentos como las nuevas tecnologías de la información y la comunicación, en particular Internet y los métodos de administración electrónica que propicia (*eGovernment*), constituyen una herramienta de incalculable potencialidad para hacer realidad en nuestros días el acceso ciudadano a la información en manos de la Administración, también en materias como las tributarias, que aquí nos ocupan. Aun cuando debe reconocerse que la Administración Tributaria española es bien consciente de ello, como atestigua su clasificación entre los países líderes de la Unión Europea en los *rankings* de implantación de medidas de administración electrónica.

Tenor literal:

Segundo. Principios éticos y de conducta

13. Dedicación y diligencia

Sin perjuicio de la normativa administrativa de aplicación, los empleados públicos al servicio de la Administración Tributaria del Estado desarrollarán su trabajo con dedicación, diligencia y agilidad, contestando todos los escritos, solicitudes y reclamaciones que los contribuyentes realicen, en todo caso dentro de plazo, cuando éste existiera, y proporcionando los motivos que fundamenten la decisión que en su caso hayan adoptado.

Comentario:

El precepto ahora analizado encuentra fácil acomodo en el principio constitucional de eficacia exigido a toda actuación de la Administración Pública (artículo 103.1 de la Constitución), aunque también en el más genérico de servicio, ya sobradamente comentado con anterioridad. Obsérvese, eso sí, que la recta intelección de este precepto lo será siempre “sin perjuicio de la normativa administrativa de aplicación”, y concretamente de las disposiciones sobre obligación de resolver y silencio administrativo previstas en la Ley 30/1992, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (artículos 42 y siguientes). Principios semejantes figuran por otro lado en el CBG-MGAC.

Tenor literal:

Segundo. Principios éticos y de conducta

14. Eficacia y profesionalidad

Los empleados públicos al servicio de la Administración Tributaria del Estado ejercerán sus funciones con eficacia y profesionalidad, cumpliendo asimismo con la jornada de trabajo legalmente establecida.

Comentario:

El encaje de este nuevo precepto en los recién mencionados principios constitucionales de eficacia y de servicio (artículo 103.1 de la Constitución) es ya aquí explícito, como también su relación con principios homólogos del CBG-MGAC. La necesidad de cumplimiento de la jornada laboral es obviamente un deber establecido en la legislación aplicable al personal al servicio de las Administraciones Públicas, cuya transgresión daría por ello lugar a las oportunas responsabilidades de índole disciplinaria. No obstante, su inclusión en este Código encuentra paralelismos en modelos citados, como el norteamericano *Code of Ethics for Government Service* de 1958, donde –casi épicamente– se prevé el deber del funcionario de los EE.UU. de “dedicar un día completo de trabajo en contraprestación por un día completo de retribución” (*give a full day’s labor for a full day’s pay*).

Tenor literal:

Segundo. Principios éticos y de conducta

15. Obediencia con iniciativa

Como muestra de su respeto al principio constitucional de jerarquía administrativa, los empleados públicos al servicio de la Administración Tributaria del Estado cumplirán sus funciones con estricta obediencia a sus superiores, sin perjuicio de la necesaria iniciativa individual o colectiva en el desarrollo de su trabajo.

Comentario:

Una vez más el encuadre de un precepto de este Código se encuentra en el capital artículo 103.1 de la Constitución, que también como es sabido se refiere expresamente al necesario respeto al principio de jerarquía en el actuar de la Administración. Añadiremos dos ideas: una, que la estricta obediencia a las instrucciones recibidas de los superiores se habrá de producir en todo caso, con la sola excepción de que éstas resulten manifiestamente ilegales a juicio del empleado público al servicio de la Administración Tributaria del Estado, lo que lógicamente sucederá en contadísimas ocasiones. Otra idea, que la obediencia, como hacen otros Códigos comparados (británicos en este caso), no debe entenderse en perjuicio de la iniciativa que, individual o colectivamente, los empleados públicos de la Administración Tributaria pueden y deben ejercer en el desarrollo de su trabajo, sin la que, sencillamente, el mismo principio de jerarquía terminaría por convertirse en enemigo de la eficacia, cuando ambos discurren paralelamente en la regulación constitucional; una iniciativa, por otro lado, que llevaría en todo caso pareja la necesaria responsabilidad, como poco después veremos, y que a la vez es ingrediente esencial del “entorno de trabajo armónico” al que de inmediato nos referimos.

Tenor literal:

Segundo. Principios éticos y de conducta

16. Entorno de trabajo armónico y éticamente sensible

Los empleados públicos al servicio de la Administración Tributaria del Estado colaborarán con sus superiores y compañeros en el cumplimiento del servicio y en la mejora de éste y de la organización, a fin de conseguir un entorno de trabajo armónico y éticamente sensible, en el que todos y cada uno de sus miembros puedan sentirse plenamente valorados en el ejercicio de sus funciones.

Comentario:

Tras los comentarios a algunos de los principios que anteceden, resulta fácil insistir en la necesidad de que quienes ostentan responsabilidades públicas, ya sea a escala política, ya administrativa, sean plenamente conscientes *en su fuero interno* de que la única fuente de legitimidad de su poder reside en la confianza ciudadana, exclusivamente otorgada en aras del servicio al interés general: así lo hacen por ejemplo recientes informes oficiales de la Administración de los EE.UU. o, seguidos casi “a pie juntillas”, de organismos internacionales como la OCDE, unos y otros igualmente empeñados en la conveniencia de crear “entornos éticos” de trabajo, en los que los valores de servicio a la comunidad constituyan fundamento de actuación cotidiana de los poderes públicos: en otras palabras, entornos de trabajo en los que actuar simplemente de modo conforme a las pautas exigidas no constituya heroísmo (como por ejemplo sucede en ambientes de corrupción generalizada y endémica), sino tan sólo la conducta que del cargo o funcionario se espera.

En la misma línea, y la idea es bien trascendente, los mejores especialistas en estas materias invitan a implantar medidas *jurídicas* contra el ejercicio abusivo del poder, diseñadas con el doble objetivo de prevenir (como quiera que todo castigo conlleva un “aleccionamiento” para potenciales infractores), pero también de reprimir el abuso de poder, habida cuenta de la inexorabilidad –casi siempre asociada a la noción de sanción– característica de la norma jurídica (frente a la norma moral o el uso social). Pero esos especialistas invitan también a adoptar medidas desde enfoques *no legales* (ya morales, ya politológicos, ya científico-administrativos, ya científico-educativos, incluso psicológico-sociales, entre otros), con el objetivo, no ya de reprimir (tarea propia del Derecho), cuanto de prevenir el abuso de poder: códigos éticos o de conducta como el presente CBGATE constituyen ejemplos clásicos de estas últimas medidas, como también la colaboración

con la sociedad civil en la prevención y lucha contra estas prácticas, o la formación en Ética para la Gobernanza, desde los más tempranos estadios educativos hasta los de profesionales al servicio del sector privado o público.

Más específicamente, el presente precepto, que como vemos halla eco en los mejores modelos comparados, proyecta asimismo principios recogidos en algún ejemplo británico, cual es el de mejora del servicio y de la organización, claro exponente de la ya general aplicación en el entorno de la Administración Pública de técnicas de *management* privado, con evidente ánimo de reforma continua en aras de la modernización.

Tenor literal:

Segundo. Principios éticos y de conducta

17. Responsabilidad

Los empleados públicos al servicio de la Administración Tributaria del Estado asumirán la responsabilidad de sus actuaciones ante sus superiores, sin derivarla hacia sus compañeros o subordinados sin causa objetiva.

Comentario:

El propio artículo 9.3 de la Constitución garantiza la responsabilidad de los poderes públicos en cualquiera de sus actuaciones. Y más atrás veíamos la conexión de la responsabilidad con la imprescindible iniciativa individual o colectiva en el desempeño de las funciones. El precepto tiene además un claro correlato en el CBG-MGAC.

Tenor literal:

Segundo. Principios éticos y de conducta

18. Secreto, confidencialidad y reserva profesional

Sin perjuicio del Código Penal y de las obligaciones establecidas en la legislación sobre el personal al servicio de las Administraciones Públicas, los empleados públicos al servicio de la Administración Tributaria del Estado preservarán el adecuado nivel de sigilo sobre las materias legalmente clasificadas en la legislación sobre secretos oficiales que por razón de su cargo hubieran conocido. Sobre cualesquiera otras materias y también sin perjuicio de las mencionadas obligaciones legales, los empleados públicos al servicio de la Administración Tributaria del Estado guardarán la discreción necesaria para garantizar la eficacia en el servicio, así como los derechos o intereses de terceros.

Comentario:

Como puede verse, el eje de este precepto gira en torno a la legislación en vigor en materia de secretos oficiales, y más en concreto alrededor de las materias que conforme a dicha legislación tuvieran la categoría de “clasificadas”. En este sentido, cuanto el precepto hace es reiterar en positivo las obligaciones que tal legislación, reforzada por el Código Penal para los supuestos en que así procede, establece en general para el personal al servicio de las Administraciones Públicas. Y así, respecto de las materias “clasificadas”, se exige sigilo, es decir, absoluta reserva; para las demás materias, se exige discreción, es decir, un sensato ejercicio de prudencia, que implicará o no silencio en función de las circunstancias en que el empleado público al servicio de la Administración Tributaria del Estado deba gestionar la información en cuestión, en la medida en que lo que en última instancia se pretende es la garantía de la eficacia en el servicio, así como de los derechos e intereses de terceros. También este precepto cuenta por lo demás con preceptos correlativos en el CBG-MGAC.

Tenor literal:

Segundo. Principios éticos y de conducta

19. Austeridad y eficiencia

En aras de los principios de austeridad y eficiencia en la prestación del servicio, los empleados públicos al servicio de la Administración Tributaria del Estado utilizarán los bienes públicos como si fueran propios, y de acuerdo exclusivamente con el interés público, evitando su uso en provecho privado, propio o de su entorno familiar y social directo.

Comentario:

Como es conocido, el artículo 31.2 de la Constitución proclama que “el gasto público realizará una asignación equitativa de los recursos públicos, y su programación y ejecución responderán a los criterios de eficiencia y economía”, proporcionando así el acomodo básico del principio que ahora comentamos. De forma más específica, y sin perjuicio de que también lo haga el CBG-MGAC, el principio anima al empleado público al servicio de la Administración Tributaria del Estado a evitar cualquier utilización de bienes públicos en beneficio privado que, de revestir especial gravedad, podría incluso derivar en responsabilidad penal, y que tradicionalmente, en nuestro país, y fuera de él, se viene considerando una práctica abusiva en el ejercicio del poder público. Y ello por más que la habitualmente “escasa monta” de la gran mayoría de tales prácticas haya venido también tradicionalmente propiciando una tolerancia muy amplia respecto de las mismas.

4. EL CUMPLIMIENTO DEL CBGATE**Tenor literal:*****Tercero. Cumplimiento del Código******1. Deber de familiaridad con el Código***

El conocimiento y consiguiente cumplimiento de los principios contenidos en el presente Código será responsabilidad de todo empleado público al servicio de la Administración Tributaria del Estado, sin que su ignorancia pueda esgrimirse como motivo de incumplimiento.

Comentario:

Con este precepto, y evidentemente, no se pretende en modo alguno llegar a las exigencias de “familiaridad” respecto de los principios del Código previstas en algunos modelos anglosajones, como el norteamericano, en el que las autoridades competentes lo remiten individualizadamente, y contra acuse de recibo, a todos y cada uno de los agentes públicos a quienes va dirigido. Así sucede, también, en el caso británico, en el que son frecuentes las referencias a la “necesidad de consultar el código de conducta del organismo para el que se trabaja” para saber cómo debe actuarse ante una situación concreta. Sí se trata en cambio de apelar a la responsabilidad de cada empleado público al servicio de la Administración Tributaria del Estado, a efectos de ahondar en la interiorización de los principios del Código, al tiempo que la necesidad de su conocimiento se pone en relación con la máxima jurídica inveteradamente prevista al efecto en nuestro ordenamiento (artículo 6.1 Código Civil).

Tenor literal:***Tercero. Cumplimiento del Código******2. Consecuencias del incumplimiento***

En el supuesto de incumplimientos de los principios del código, y sin perjuicio de lo dispuesto en la normativa sobre régimen disciplinario del personal al servicio de las Administraciones Públicas, el Ministro de Economía y Hacienda, o por delegación suya el Secretario de Estado de Hacienda y Presupuestos, adoptarán las medidas que en función de las circunstancias estimen oportunas.

Comentario:

Por las razones de rango normativo en su momento aducidas, aunque también porque el objetivo básico de este Código no es el de sancionar cuanto el de incentivar “en positivo” comportamientos correctos, el incumplimiento de sus principios no puede ni debe en ningún caso motivar *per se* la incoación de un procedimiento disciplinario. De ahí que la autoridad de que se trate no debiera a nuestro juicio sino, una vez constatado el incumplimiento, adoptar las medidas de corrección o prevención que, con independencia del cauce disciplinario, estime oportunas. *Mutatis mutandis*, el CBG-MGAC sigue pautas muy similares respecto de sus particulares destinatarios. Por otro lado, y dado que el incumplimiento del CBGATE puede asimismo suponer una infracción disciplinaria, el precepto que comentamos debe lógicamente entenderse sin perjuicio de la posible iniciación de un procedimiento disciplinario por la autoridad al efecto competente.

Tenor literal:

Tercero. Cumplimiento del Código

3. Contribución del empleado público al cumplimiento

Todo empleado público al servicio de la Administración Tributaria del Estado deberá contribuir al efectivo cumplimiento de los principios establecidos en el presente Código, mediante la consideración de los incumplimientos de que haya tenido conocimiento con la mayor seriedad, llegando en su caso a ponerlos en conocimiento de sus superiores inmediatos.

Comentario:

Los antecedentes más claros del presente precepto se encuentran en modelos del Reino Unido, si bien su segunda gran dimensión, la de los mecanismos de denuncia a que de inmediato nos referiremos, tiene igualmente claros anclajes en los códigos norteamericanos, y también, principalmente a través de estos últimos, en los elaborados a escala europea (Consejo de Europa o Unión Europea), sin que falten algunos resortes actualmente vigentes en el Derecho español.

Efectivamente, algunos ordenamientos –entre ellos el español– atribuyen a sus ciudadanos la posibilidad de denunciar comportamientos abusivos en el ejercicio del poder público (lo que en ámbitos anglosajones se conoce como *whistleblowing*, literalmente “toque de silbato”), tanto en el ámbito penal, como en el administrativo (el único ejemplo existente en nuestra legislación administrativa figura en la de regulación de los conflictos de intereses de miembros del Gobierno y altos cargos, art. 19.2 Ley 5/2006). En lo que al ámbito penal atañe, es asimismo posible conforme al ordenamiento español que sean los propios ciudadanos quienes ejerzan la acción penal, llamada en este caso “acción popular”, contra cargos o funcionarios presuntamente autores de delitos relacionados con la corrupción (organizaciones como Manos Limpias comienzan a ser conocidas por ello). Otra institución de relevancia en el enjuiciamiento de los delitos relacionados con la corrupción es el jurado, plenamente competente en nuestro país a tal efecto.

La disposición ahora comentada de nuestro Código enlaza con los mecanismos citados, por más que se desenvuelva en el bien modesto ámbito de la propia Administración Tributaria del Estado, y concretamente en el de los cargos o funcionarios que ostenten la condición de superiores jerárquicos inmediatos del denunciante.

Tenor literal:

Tercero. Cumplimiento del Código

4. Informe sobre incumplimientos

Anualmente, el Ministro de Economía y Hacienda conocerá un informe elevado por el Secretario de Estado de Hacienda y Presupuestos sobre los eventuales incumplimientos de los principios de este Código, con el fin de analizar sus causas y proponer medidas que garanticen un mayor respeto en el futuro.

Comentario:

El CBG-MGAC incluye entre sus preceptos otro de muy semejante tenor. Sus fines son claros, vistos ambos textos.

ANEXOS

1. EE.UU

A. CODE OF ETHICS FOR GOVERNMENT SERVICE

House Document 103, 86th Congress, 1st Session - Passed by the Congress of the United States on July 11, 1958.

ANY PERSON IN GOVERNMENT SERVICE SHOULD:

- I. Put loyalty to the highest moral principles above loyalty to persons, party, or Government department.
- II. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
- III. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
- IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
- VI. Make no private promises of any kind binding upon the duties of office, since the Government employee has no private word which can be binding on public duty.
- VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
- VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
- IX. Expose corruption wherever discovered.
- X. Uphold these principles, ever conscious that public office is a public trust.



B. STANDARDS OF ETHIC CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH (5 CFR PART. 2635)

LEXIS PUBLISHING'S CODE OF FEDERAL REGULATIONS

Copyright (C) 2005, LEXIS Publishing

*** THIS SECTION IS CURRENT THROUGH THE AUGUST 4, 2005 ISSUE OF ***

*** THE FEDERAL REGISTER ***

TITLE 5 -- ADMINISTRATIVE PERSONNEL

CHAPTER XVI -- OFFICE OF GOVERNMENT ETHICS

SUBCHAPTER B -- GOVERNMENT ETHICS

PART 2635 -- STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

SUBPART A -- GENERAL PROVISIONS

Subpart A-GENERAL PROVISIONS

§ 2635.101 Basic obligation of public service.

(a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those--such as Federal, State, or local taxes--that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

(c) Related statutes. In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

§ 2635.102 Definitions.

The definitions listed below are used throughout this part. Additional definitions appear in the subparts or sections of subparts to which they apply. For purposes of this part:

(a) Agency means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.

(b) Agency designee refers to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted by this part with respect to another employee. An agency may delegate these authorities to any number of agency designees necessary to ensure that determinations are made, approvals are given, and other actions are taken in a timely and responsible manner. Any provision that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.

(c) Agency ethics official refers to the designated agency ethics official or to the alternate designated agency ethics official, referred to in § 2638.202(b) of this chapter, and to any deputy ethics official, described in § 2638.204 of this chapter, who has been delegated authority to assist in carrying out the responsibilities of the designated agency ethics official.

(d) Agency programs or operations refers to any program or function carried out or performed by an agency, whether pursuant to statute, Executive order, or regulation.

(e) Corrective action includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.

(f) Designated agency ethics official refers to the official designated under § 2638.201 of this chapter.

(g) Disciplinary action includes those disciplinary actions referred to in Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5, including but not limited to reprimand, suspension, demotion, and removal. In the case of a military officer, comparable provisions may include those in the Uniform Code of Military Justice.

(h) Employee means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. For purposes other than subparts B and C of this part, it does not include the President or Vice President. Status as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

(i) Head of an agency means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(j) He, his, and him include she, hers and her.

(k) Person means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(l) Special Government employee means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform



temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(m) Supplemental agency regulation means a regulation issued pursuant to § 2635.105.

§ 2635.103 Applicability to members of the uniformed services.

The provisions of this part, except this section, are not applicable to enlisted members of the uniformed services. Each agency with jurisdiction over enlisted members of the uniformed services shall issue regulations defining the ethical conduct obligations of enlisted members under its jurisdiction. Those regulations shall be consistent with Executive Order 12674, April 12, 1989, as modified, and may prescribe the full range of statutory and regulatory sanctions, including those available under the Uniform Code of Military Justice, for failure to comply with such regulations.

§ 2635.104 Applicability to employees on detail.

(a) Details to other agencies. Except as provided in paragraph (d) of this section, an employee on detail, including a uniformed officer on assignment, from his employing agency to another agency for a period in excess of 30 calendar days shall be subject to any supplemental agency regulations of the agency to which he is detailed rather than to any supplemental agency regulations of his employing agency.

(b) Details to the legislative or judicial branch. An employee on detail, including a uniformed officer on assignment, from his employing agency to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail or assignment, the employee shall not be subject to the provisions of this part, except this section, or, except as provided in paragraph (d) of this section, to any supplemental agency regulations of his employing agency, but shall remain subject to the conflict of interest prohibitions in title 18 of the United States Code.

(c) Details to non-Federal entities. Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a non-Federal entity remains subject to this part and to any supplemental agency regulation of his employing agency. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the designated agency ethics official may grant a written exemption from subpart B of this part based on his determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

(d) Applicability of special agency statutes. Notwithstanding paragraphs (a) and (b) of this section, an employee who is subject to an agency statute which restricts his activities or financial holdings specifically because of his status as an employee of that agency shall continue to be subject to any provisions in the supplemental agency regulations of his employing agency that implement that statute.

§ 2635.105 Supplemental agency regulations.

In addition to the regulations set forth in this part, an employee shall comply with any supplemental agency regulations issued by his employing agency under this section.

(a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part. Supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part shall be:

- (1) In the form of a supplement to the regulations in this part; and
- (2) In addition to the substantive provisions of this part.

(b) After concurrence and co-signature by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the FEDERAL REGISTER for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. Supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the FEDERAL REGISTER.

(c) This section applies to any supplemental agency regulations or amendments thereof issued under this part. It does not apply to:

- (1) A handbook or other issuance intended merely as an explanation of the standards contained in this part or in supplemental agency regulations.
- (2) An instruction or other issuance the purpose of which is to:
 - (i) Delegate to an agency designee authority to make any determination, give any approval or take any other action required or permitted by this part or by supplemental agency regulations; or

(ii) Establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by this part or by supplemental agency regulations, or for retaining any such documentation; or

(3) Regulations or instructions that an agency has authority, independent of this part, to issue, such as regulations implementing an agency's gift acceptance statute, protecting categories of nonpublic information or establishing standards for use of Government vehicles. Where the content of any such regulations or instructions was included in the agency's standards of conduct regulations issued pursuant to Executive Order 11222 and the Office of Government Ethics concurs that they need not be issued as part of an agency's supplemental agency regulations, those regulations or instructions may be promulgated separately from the agency's supplemental agency regulations.

§ 2635.106 Disciplinary and corrective action.

(a) Except as provided in § 2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Governmentwide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

(b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

§ 2635.107 Ethics advice.

(a) As required by § § 2638.201 and 2638.202(b) of this chapter, each agency has a designated agency ethics official who, on the agency's behalf, is responsible for coordinating and managing the agency's ethics program, as well as an alternate. The designated agency ethics official has authority under § 2638.204 of this chapter to delegate certain responsibilities, including that of providing ethics counseling regarding the application of this part, to one or more deputy ethics officials.

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

Subpart B-GIFTS FROM OUTSIDE SOURCES

§ 2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.202 General standards.

(a) General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.



(b) Relationship to illegal gratuities statute. Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by *18 U.S.C. 201(c)(1)(B)*.

(c) Limitations on use of exceptions. Notwithstanding any exception provided in this subpart, other than § 2635.204(j), an employee shall not:

- (1) Accept a gift in return for being influenced in the performance of an official act;
- (2) Solicit or coerce the offering of a gift;
- (3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$ 6 and the aggregate value from any one manufacturer does not exceed the \$ 50 aggregate limitation in § 2635.204(a) on de minimis gifts of \$ 20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) *18 U.S.C. 201(b)*, which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in *18 U.S.C. 201(b)*, the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials; and

(ii) *18 U.S.C. 209*, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; or

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to § 2635.204(l).

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) Agency has the meaning set forth in § 2635.102(a). However, for purposes of this subpart, an executive department, as defined in *5 U.S.C. 101*, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

- (1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;
- (2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
- (3) Loans from banks and other financial institutions on terms generally available to the public;
- (4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;
- (5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;
- (6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

NOTE: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR part 301-53.

(8) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(9) Anything for which market value is paid by the employee.

(c) Market value means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket, [<--]

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$ 20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$ 20, the market value of the ticket is its \$ 250 face value.

(d) Prohibited source means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

NOTE: Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

Example 2: Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this chapter.



Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) Vendor promotional training means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in § 2635.101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) Gifts of \$ 20 or less. An employee may accept unsolicited gifts having an aggregate market value of \$ 20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$ 50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$ 20, the employee may not pay the excess value over \$ 20 in order to accept that portion of the gift or those gifts worth \$ 20. Where the aggregate value of tangible items offered on a single occasion exceeds \$ 20, the employee may decline any distinct and separate item in order to accept those items aggregating \$ 20 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of \$ 30 each. The aggregate market value of the gifts offered on this single occasion is \$ 60, \$ 40 more than the \$ 20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$ 60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$ 18 and a book about the history of cartography with a market value of \$ 15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$ 20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth \$ 10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$ 50 limitation on gifts of \$ 20 or less from any one person, the four gifts must be aggregated because a person is defined at § 2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$ 50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at § 2635.204(b) for gifts based on a personal relationship.

Example 4: Under the authority of *31 U.S.C. 1353* for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of \$ 20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although *31 U.S.C. 1353* is the only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of \$ 20 or less accepted under § 2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: During off-duty time, an employee of the Department of Defense (DOD) attends a trade show involving companies that are DOD contractors. He is offered a \$ 15 computer program disk at X Company's booth, a \$ 12 appointments calendar at Y Company's booth, and a deli lunch worth \$ 8 from Z Company. The employee may accept all three of these items because they do not exceed \$ 20 per source, even though they total more than \$ 20 at this single occasion.

(b) Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry fee is \$ 500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) Discounts and similar benefits. In addition to those opportunities and benefits excluded from the definition of a gift by § 2635.203(b)(4), an employee may accept:

(1) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

Example 1: An employee of the Consumer Product Safety Commission may accept a discount of \$ 50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the \$ 50 discount is a standard offer that the manufacturer has made broadly available through a number of similar organizations to large segments of the public.

Example 2: An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its \$ 5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) Awards and honorary degrees.

(1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$ 200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$ 200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the



award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in § 2635.204(d)(1), an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

Example 3: An ambassador selected by a nonprofit organization as recipient of its annual award for distinguished service in the interest of world peace may, together with his wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth \$ 200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds \$ 200 and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.

(e) Gifts based on outside business or employment relationships. An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under § 2635.502, the employee may be disqualified from performing official duties affecting her husband's employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a \$ 50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel and meals in connection with an interview trip.

(4) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in § 2635.603(a).

(f) Gifts in connection with political activities permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.

Example 1: The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) Widely attended gatherings and other events

(1) Speaking and similar engagements. When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) Widely attended gatherings. When there has been a determination that his attendance is in the interest of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$ 305 or less, from a person other than the sponsor of the event. A gathering 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, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(3) Determination of agency interest. The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom the finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the person who has extended the invitation or, where that person is an association or organization, of its members.

(4) Free attendance. For purposes of paragraphs (g)(1) and (g)(2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and 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. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (g)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.

NOTE: There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) Cost provided by sponsor of event. The cost of the employee's attendance will not be considered to be provided by the sponsor, and the invitation is not considered to be from the sponsor of the event, where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) Accompanying 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 has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event at



which the employee's free attendance is permitted under paragraph (g)(1) or (g)(2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1: An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$ 400 and anticipates attendance of approximately 400. An Air Force contractor pays \$ 2,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$ 2,000 to the association in order that the association might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency. The Air Force official could not in any case accept an invitation directly from the nonsponsor contractor because the market value of the gift exceeds \$ 305.

Example 2: An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets for the event cost \$ 305 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency, she may accept the invitation from the news organization because more than 100 persons will attend and the cost of the ticket does not exceed \$ 305. However, if the invitation were extended to the employee and an accompanying guest, her guest could not be authorized to attend for free since the market value of the gift of free attendance would be \$ 610 and the invitation is from a person other than the sponsor of the event.

Example 3: An employee of the Department of Energy (DOE) and his wife have been invited by a major utility executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her husband. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her husband who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.

Example 4: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of § 2635.204(a), he may accept a token of appreciation for his speech having a market value of \$ 20 or less.

Example 5: An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$ 15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the \$ 20 de minimis exception at § 2635.204(a).

Example 6: An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

(h) Social invitations from persons other than prohibited sources. An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

- (1) The invitation is from a person who is not a prohibited source; and
- (2) No fee is charged to any person in attendance.

Example 1: Along with several other Government officials and a number of individuals from the private sector, the Administrator of the Environmental Protection Agency has been invited to the premier showing of a new adventure movie about industrial espionage. The producer is paying all costs of the showing. The Administrator may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.

Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source. The employee may attend even though he has only recently been introduced to the hostess and suspects that he may have been invited because of his official position.

(i) Meals, refreshments and entertainment in foreign areas. An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:

(1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC,FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;

(2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;

(3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

(4) The gift of meals, refreshments or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1: A number of local businessmen in a developing country are anxious for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the businessmen at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.

(j) Gifts to the President or Vice President. Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.202(c) (1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(k) Gifts authorized by supplemental agency regulation. An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(l) Gifts accepted under specific statutory authority. The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with part 410 of this title; or

NOTE: 26 USC 501(c)(3) is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

§ 2635.205 Proper disposition of prohibited gifts.

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See § 2635.203(c).

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth \$ 200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor \$ 200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.



Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a \$ 300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under § 2635.204(g), he may attend if he reimburses the donor the \$ 300 face value of the ticket.

(4) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 101-49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101-25.103.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

Subpart C-GIFTS BETWEEN EMPLOYEES

§ 2635.301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.302 General standards.

(a) Gifts to superiors. Except as provided in this subpart, an employee may not:

- (1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or
- (2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(b) Gifts from employees receiving less pay. Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

- (1) The two employees are not in a subordinate-official superior relationship; and
- (2) There is a personal relationship between the two employees that would justify the gift.

(c) Limitation on use of exceptions. Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

§ 2635.303 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) Gift has the meaning set forth in § 2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) Indirectly, for purposes of § 2635.302(b), has the meaning set forth in § 2635.203(f). For purposes of § 2635.302(a), it includes a gift:

- (1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or
- (2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, market value has the meaning set forth in § 2635.203(c).

(d) Official superior means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating

the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) Solicit means to request contributions by personal communication or by general announcement.

(f) Voluntary contribution means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who choose to participate in the farewell lunch is voluntary.

§ 2635.304 Exceptions.

The prohibitions set forth in § 2635.302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in § 2635.302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) General exceptions. On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) Items, other than cash, with an aggregate market value of \$ 10 or less per occasion;
- (2) Items such as food and refreshments to be shared in the office among several employees;
- (3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;
- (4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and
- (5) Leave transferred under subpart I of part 630 of this title to an employee who is not an immediate supervisor, unless obtained in violation of § 630.912 of this title.

Example 1: Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for \$ 8.

Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than \$ 5. Gifts given on this basis are not occasional.

Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a \$ 15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of \$ 10.

Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for \$ 10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) Special, infrequent occasions. A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or
- (2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.



Example 1: The administrative assistant to the personnel director of the Tennessee Valley Authority may send a \$ 30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.

Example 2: A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for \$ 70.

Example 3: Upon the occasion of the supervisor's retirement from Federal service, an employee of the Fish and Wildlife Service may give her supervisor a book of wildlife photographs which she purchased for \$ 19. The retiring supervisor may accept the book.

(c) Voluntary contributions. An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

(1) On a special, infrequent occasion as described in paragraph (b) of this section; or

(2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

Example 1: To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.

Example 2: The General Counsel of the National Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Christmas occurs annually and is not an occasion of personal significance.

Example 3: Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they events of personal significance within the meaning of § 2635.304(b). However, subordinates may take up a collection and employees may contribute \$ 3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

Example 4: Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.

Example 5: An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff and has informed each of the Assistant Secretary's subordinates that they should contribute \$ 5 for the gift. Her method of collection is improper. Although she may recommend a \$ 5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

Subpart D-CONFLICTING FINANCIAL INTERESTS

§ 2635.401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by § 2635.403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with § 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. See also part 2640 of this chapter, for additional guidance amplifying § 2635.402.

§ 2635.402 Disqualifying financial interests.

(a) Statutory prohibition. An employee is prohibited by criminal statute, *18 U.S.C. 208(a)*, from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

NOTE: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate *18 U.S.C. 208(a)* or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate *18 U.S.C. 208(a)*, an employee shall disqualify himself from participation in the matter

in accordance with paragraph (c) of this section or obtain a waiver or determine that an exemption applies, as described in paragraph (d) of this section.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Direct and predictable effect.

(i) A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

(ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

NOTE: If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

Example 1: An employee of the National Library of Medicine at the National Institutes of Health has just been asked to serve on the technical evaluation panel to review proposals for a new library computer search system. DEF Computer Corporation, a closely held company in which he and his wife own a majority of the stock, has submitted a proposal. Because award of the systems contract to DEF or to any other offeror will have a direct and predictable effect on both his and his wife's financial interests, the employee cannot participate on the technical evaluation team unless his disqualification has been waived.

Example 2: Upon assignment to the technical evaluation panel, the employee in the preceding example finds that DEF Computer Corporation has not submitted a proposal. Rather, LMN Corp., with which DEF competes for private sector business, is one of the six offerors. The employee is not disqualified from serving on the technical evaluation panel. Any effect on the employee's financial interests as a result of the agency's decision to award or not award the systems contract to LMN would be at most indirect and speculative.

(2) Imputed interests. For purposes of 18 U.S.C. 208(a) and this subpart, the financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:

(i) The employee's spouse;

(ii) The employee's minor child;

(iii) The employee's general partner;

(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

(v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

Example 1: An employee of the Department of Education serves without compensation on the board of directors of Kinder World, Inc., a nonprofit corporation that engages in good works. Even though her personal financial interests will not be affected, the employee must disqualify herself from participating in the review of a grant application submitted by Kinder World. Award or denial of the grant will affect the financial interests of Kinder World and its financial interests are imputed to her as a member of its board of directors.

Example 2: The spouse of an employee of the Food and Drug Administration has obtained a position with a well established biomedical research company. The company has developed an artificial limb for which it is seeking FDA approval and the employee would ordinarily be asked to participate in the FDA's review and approval process. The spouse is a salaried employee of the company and has no direct ownership interest in the company. Nor does she have an indirect ownership interest, as would be the case, for example, if she were participating in a pension plan that held stock in the company. Her position with the company is such that the granting or withholding of FDA approval will not have a direct and predictable effect on her salary or on her continued employment with the



company. Since the FDA approval process will not affect his spouse's financial interests, the employee is not disqualified under § 2635.402 from participating in that process. Nevertheless, the financial interests of the spouse's employer may be disqualifying under the impartiality principle, as implemented at § 2635.502.

(3) Particular matter. The term particular matter encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term particular matter, however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Internal Revenue Service's amendment of its regulations to change the manner in which depreciation is calculated is not a particular matter, nor is the Social Security Administration's consideration of changes to its appeal procedures for disability claimants.

Example 2: Consideration by the Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways involves a particular matter.

(4) Personal and substantial. To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

(c) Disqualification. Unless the employee is authorized to participate in the particular matter by virtue of a waiver or exemption described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) Documentation. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An Assistant Secretary of the Department of the Interior owns recreational property that borders on land which is being considered for annexation to a national park. Annexation would directly and predictably increase the value of her vacation property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary might be wise to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.

(d) Waiver of or exemptions from disqualification. An employee who would otherwise be disqualified by 18 U.S.C. 208(a) may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory exemption or individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. 208(b)(4).

(1) Regulatory exemptions. Under 18 U.S.C. 208(b)(2), regulatory exemptions of general applicability have been issued by the Office of Government Ethics, based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of employees to whom those

exemptions apply. See the regulations in subpart B of part 2640 of this chapter, which supersede any preexisting agency regulatory exemptions.

(2) Individual waivers. An individual waiver enabling the employee to participate in one or more particular matters may be issued under *18 U.S.C. 208(b)(1)* if, in advance of the employee's participation:

(i) The employee:

(A) Advises the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances of the particular matter or matters; and

(B) Makes full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the employee's financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee. See also subpart C of part 2640 of this chapter, for additional guidance.

(3) Federal advisory committee member waivers. An individual waiver may be issued under *18 U.S.C. 208(b)(3)* to a special Government employee serving on, or under consideration for appointment to, an advisory committee within the meaning of the Federal Advisory Committee Act if the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated):

(i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and

(ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the otherwise disqualifying financial interest. See also subpart C of part 2640 of this chapter, for additional guidance.

(4) Consultation and notification regarding waivers. When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraph (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

(e) Divestiture of a disqualifying financial interest. Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, *18 U.S.C. 208(a)* and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.

(1) Voluntary divestiture. An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) Directed divestiture. An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a), or if the agency determines in accordance with § 2635.403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) Eligibility for special tax treatment. An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) Official duties that give rise to potential conflicts. Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

§ 2635.403 Prohibited financial interests.

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

NOTE: There is no statute of Governmentwide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statutes which, in some cases, may be implemented by agency regulations issued independent of this part. Provided still further, that for those agencies listed in appendix C to this part, the grace period for any such existing provisions shall be further extended until August 7, 1996 or until issuance by each individual agency concerned of a supplemental regulation, whichever occurs first.



(a) Agency regulation prohibiting certain financial interests. An agency may, by supplemental agency regulation issued after February 3, 1993, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, or any category of agency employees, and the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Where the agency restricts or prohibits the holding of certain financial interests by its employees' spouses or minor children, any such prohibition or restriction shall be based on a determination that there is a direct and appropriate nexus between the prohibition or restriction as applied to spouses and minor children and the efficiency of the service.

(b) Agency determination of substantial conflict. An agency may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the agency designee's determination that the holding of such interest or interests will:

(1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or

(2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

Example 1: An Air Force employee who owns stock in a major aircraft engine manufacturer is being considered for promotion to a position that involves responsibility for development of a new fighter airplane. If the agency determined that engineering and other decisions about the Air Force's requirements for the fighter would directly and predictably affect his financial interests, the employee could not, by virtue of *18 U.S.C. 208(a)*, perform these significant duties of the position while retaining his stock in the company. The agency can require the employee to sell his stock as a condition of being selected for the position rather than allowing him to disqualify himself in particular matters.

(c) Definition of financial interest. For purposes of this section:

(1) Except as provided in paragraph (c)(2) of this section, the term financial interest is limited to financial interests that are owned by the employee or by the employee's spouse or minor children. However, the term is not limited to only those financial interests that would be disqualifying under *18 U.S.C. 208(a)* and § 2635.402. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled.

Example 1: A regulatory agency has concluded that ownership by its employees of stock in entities regulated by the agency would significantly diminish public confidence in the agency's performance of its regulatory functions and thereby interfere with the accomplishment of its mission. In its supplemental agency regulations, the agency may prohibit its employees from acquiring or continuing to hold stock in regulated entities.

Example 2: An agency that insures bank deposits may, by supplemental agency regulation, prohibit its employees who are bank examiners from obtaining loans from banks they examine. Examination of a member bank could have no effect on an employee's fixed obligation to repay a loan from that bank and, thus, would not affect an employee's financial interests so as to require disqualification under § 2635.402. Nevertheless, a loan from a member bank is a discrete financial interest within the meaning of § 2635.403(c) that may, when appropriate, be prohibited by supplemental agency regulation.

(2) The term financial interest includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under § 2635.402(b)(2)(iii) or (iv).

Example 1. The Foundation for the Preservation of Wild Horses maintains herds of horses that graze on public and private lands. Because its costs are affected by Federal policies regarding grazing permits, the Foundation routinely comments on all proposed rules governing use of Federal grasslands issued by the Bureau of Land Management. BLM may require an employee to resign his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position within the Bureau rather than allowing him to rely on disqualification in particular cases.

(d) Reasonable period to divest or terminate. Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to

comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

(e) Eligibility for special tax treatment. An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter.

Subpart E-IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

§ 2635.501 Overview.

(a) This subpart contains two provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 2635.502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 to determine whether he should or should not participate in a particular matter.

(b) Under § 2635.503, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

NOTE: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, *18 U.S.C. 208(a)*, from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver or exemption, as described in §§ 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations. Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth in subpart B of part 2640 of this chapter, that also constitutes a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

§ 2635.502 Personal and business relationships.

(a) Consideration of appearances by the employee. Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) Definitions. For purposes of this section:

(1) An employee has a covered relationship with:



(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

NOTE: An employee who is seeking employment within the meaning of § 2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) 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;

(iv) Any person for whom the employee has, 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 described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

NOTE: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) Direct and predictable effect has the meaning set forth in § 2635.402(b)(1).

(3) Particular matter involving specific parties has the meaning set forth in § 2637.102(a)(7) of this chapter.

Example 1: An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

Example 2: An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

Example 3: An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. Where the parent corporation is a conglomerate, the employee could reasonably conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

Example 4: An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances, the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) Determination by agency designee. Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily

ily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) Authorization by agency designee. Where an employee's participation in a particular matter involving specific parties would not violate *18 U.S.C. 208(a)*, but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that 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. Factors which may be taken into consideration include:

- (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.

Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, *18 U.S.C. 208(a)*, from participating in a particular matter affecting the financial interest of a person who is his general partner. See § 2635.402.

Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) Disqualification. Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.



(1) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(2) Documentation. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(f) Relevant considerations. An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

§ 2635.503 Extraordinary payments from former employers.

(a) Disqualification requirement. Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

Example 2 An employee received an extraordinary payment from her former employer, a coal mine operator, prior to entering on duty with the Department of the Interior. For two years thereafter, she may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Extraordinary payment means any item, including cash or an investment interest, with a value in excess of \$ 10,000, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: The vice president of a small corporation is nominated to be an ambassador. In recognition of his service to the corporation, the board of directors votes to pay him \$ 50,000 upon his confirmation in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of \$ 50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) Former employer includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) Waiver of disqualification. The disqualification requirement of this section may be waived based on 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. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

Subpart F-SEEKING OTHER EMPLOYMENT

§ 2635.601 Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons whose financial interests would be directly and predictably affected by particular matters in

which the employees participate personally and substantially. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment." See § 2635.402 and § 2640.103 of this chapter. Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations.

§ 2635.602 Applicability and related considerations.

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in § 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of § 2635.604 and 2635.606 if particular matters in which the employee will be participating personally and substantially would directly and predictably affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

NOTE: An employee who is seeking employment with a person whose financial interests are not affected directly and predictably by particular matters in which he participates personally and substantially has no obligation under this subpart. An employee may, however, be subject to other statutes which impose requirements on employment contacts or discussions, such as 41 U.S.C. 423(c), applicable to agency officials involved in certain procurement matters.

(a) Related employment restrictions

(1) Outside employment while a Federal employee. An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities under subparts G and H of this part. He must also comply with any disqualification requirement that may be applicable under subpart D or E of this part as a result of his outside employment activities.

(2) Post-employment restrictions. An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. Regulations implementing the Governmentwide post-employment statute, 18 U.S.C. 207, are contained in parts 2637 and 2641 of this chapter. Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. 423(d).

(b) Interview trips and entertainment. Where a prospective employer who is a prohibited source as defined in § 2635.203(d) offers to reimburse an employee's travel expenses, or provide other reasonable amenities incident to employment discussions, the employee may accept such amenities in accordance with § 2635.204(e)(3).

§ 2635.603 Definitions.

For purposes of this subpart:

(a) Employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

Example 1: An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The independent contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2: An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.

(b) An employee is seeking employment once he has begun seeking employment within the meaning of paragraph (b)(1) of this section and until he is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if he has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 USC 208(a), the term negotiations means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position;



(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:

(A) For the sole purpose of requesting a job application; or

(B) For the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or

(iii) Made a response other than rejection to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1: An employee of the Health Care Financing Administration is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at HCFA and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.

Example 3: An employee of the Defense Contract Audit Agency is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be interested in leaving DCAA. The DCAA employee says he is interested in knowing what kind of work would be involved. They discuss the duties of the position the accounting division would like to fill and the DCAA employee's qualifications for the position. They do not discuss salary. The head of the division explains that he has not yet received authorization to fill the particular position and will get back to the employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding possible employment. The employee has begun seeking employment with the Army contractor.

Example 4: An employee of the Occupational Safety and Health Administration helping to draft safety standards applicable to the textile industry has mailed his resume to 25 textile manufacturers. He has not begun seeking employment with any of the twenty-five. If he receives a response from one of the resume recipients indicating an interest in employment discussions, the employee will have begun seeking employment with the respondent at that time.

Example 5: A special Government employee of the Federal Deposit Insurance Corporation is serving on an advisory committee formed for the purpose of reviewing rules applicable to all member banks. She mails an unsolicited letter to a member bank offering her services as a contract consultant. She has not begun seeking employment with the bank until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.

Example 6: A geologist employed by the U.S. Geological Survey has been working as a member of a team preparing the Government's case in an action brought by the Government against six oil companies. The geologist sends her resume to an oil company that is a named defendant in the action. The geologist has begun seeking employment with that oil company and will be seeking employment for two months from the date the resume was mailed. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the oil company as of the date she makes such withdrawal or receives such notification.

(c) Prospective employer means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer includes:

(1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and

(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

Example 1: An employee of the Federal Aviation Administration has overall responsibility for airport safety inspections in a three-state area. She has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

(d) Direct and predictable effect particular matter, and personal and substantial have the respective meanings set forth in § 2635.402(b)(1), (3), and (4).

§ 2635.604 Disqualification while seeking employment.

(a) Obligation to disqualify. Unless the employee's participation is authorized in accordance with § 2635.605, the employee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment within the meaning of § 2635.603(b). Disqualification is accomplished by not participating in the particular matter.

(b) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(c) Documentation. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should disclose his intentions to his supervisor in order that appropriate adjustments in his work assignments can be made.

Example 2: An employee of the Food and Drug Administration is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is involved in testing a drug for which the company is seeking FDA approval. Before making a response that is not a rejection, the employee should disqualify himself from further participation in the testing. Where he has authority to ask his colleague to assume his testing responsibilities, he may accomplish his disqualification by transferring the work to that coworker. However, to ensure that his colleague and others with whom he had been working on the recommendations do not seek his advice regarding testing or otherwise involve him in the matter, it may be necessary for him to advise those individuals of his disqualification.

Example 3: The General Counsel of a regulatory agency wishes to engage in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can in fact accomplish his disqualification by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be assumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he would be wise to file a written disqualification statement with the Commissioners of the regulatory agency and provide his subordinates with written notification of his disqualification, or he may be specifically asked by an agency ethics official or the Commissioners to file a written disqualification statement.



Example 4: A scientist is employed by the National Science Foundation as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment as a member of the faculty of a university that several years earlier received an NSF grant to study the effect of fluorocarbons, but has no grant application pending. As long as the university does not submit a new application for the panel's review, the employee would not have to take any action to effect disqualification.

(d) Agency determination of substantial conflict. Where the agency determines that the employee's action in seeking employment with a particular person will require his disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

§ 2635.605 Waiver or authorization permitting participation while seeking employment.

(a) Waiver. Where, as defined in § 2635.603(b)(1)(i), an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. 208(a), the employee may participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (b)(3). These waivers are described in § 2635.402(d). See also subpart C of part 2640 of this chapter. For certain employees, a regulatory exemption under the authority of 18 U.S.C. 208(b)(2) may also apply (see subpart B of part 2640 of this chapter).

Example 1: An employee of the Department of Agriculture has had two telephone conversations with an orange grower regarding possible employment. They have discussed the employee's qualifications for a particular position with the grower, but have not yet discussed salary or other specific terms of employment. The employee is negotiating for employment within the meaning of 18 U.S.C. 208(a) and § 2635.603(b)(1)(i). In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.

(b) Authorization by agency designee. Where an employee is seeking employment within the meaning of § 2635.603(b)(1) (ii) or (iii), a reasonable person would be likely to question his impartiality if he were to participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized his participation in accordance with the standards set forth in § 2635.502(d).

Example 1: Within the past month, an employee of the Education Department mailed her resume to a university. She is thus seeking employment with the university within the meaning of § 2635.603(b)(1)(ii) even though she has received no reply. In the absence of specific authorization by the agency designee in accordance with § 2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.

§ 2635.606 Disqualification based on an arrangement concerning prospective employment or otherwise after negotiations.

(a) Employment or arrangement concerning employment. An employee shall be disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. 208 (b)(1) or (b)(3), or by a regulatory exemption under the authority of 18 U.S.C. 208 (b)(2). These waivers and exemptions are described in § 2635.402(d). See also subparts B and C of part 2640 of this chapter.

Example 1: A military officer has accepted a job with a defense contractor to begin in six months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).

Example 2: An accountant has just been offered a job with the Comptroller of the Currency which involves a two-year limited appointment. Her private employer, a large corporation, believes the job will enhance her skills and has agreed to give her a two-year unpaid leave of absence at the end of which she has agreed to return to work for the corporation. During the two-year period she is to be a COC employee, the accountant will have an arrangement concerning future employment with the corporation that will require her disqualification from participation in any particular matter that will have a direct and predictable effect on the corporation's financial interests.

(b) Offer rejected or not made. The agency designee for the purpose of § 2635.502(c) may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all the relevant factors, including those listed in § 2635.502(d), and a determination that the concern that a reasonable person may ques-

tion the integrity of the agency's decisionmaking process outweighs the Government's interest in the employee's participation in the particular matter.

Example 1: An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to be disqualified from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially in the matter outweighs the Government's interest in her participation.

Subpart G-MISUSE OF POSITION

§ 2635.701 Overview.

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. This subpart sets forth standards relating to:

- (a) Use of public office for private gain;
- (b) Use of nonpublic information;
- (c) Use of Government property; and
- (d) Use of official time.

§ 2635.702 Use of public office for private gain.

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) Inducement or coercion of benefits. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, may also have violated *18 U.S.C. 205*.

(b) Appearance of governmental sanction. Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by § 2635.807(b). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.



(c) Endorsements. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except:

(1) In furtherance of statutory authority to promote products, services or enterprises; or

(2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.

Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and explain the advantages of procurement from the United States company.

Example 3: The Administrator of the Environmental Protection Agency may sign a letter to an oil company indicating that its refining operations are in compliance with Federal air quality standards even though he knows that the company has routinely displayed letters of this type in television commercials portraying it as a "trustee of the environment for future generations."

Example 4: An Assistant Attorney General may not use his official title or refer to his Government position in a book jacket endorsement of a novel about organized crime written by an author whose work he admires. Nor may he do so in a book review published in a newspaper.

(d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of § 2635.502.

(e) Use of terms of address and ranks. Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable", or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

§ 2635.703 Use of nonpublic information.

(a) Prohibition. An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

(b) Definition of nonpublic information. For purposes of this section, nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

(1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;

(2) Is designated as confidential by an agency; or

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

Example 1: A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate Federal securities statutes as well as this section.

Example 2: A General Services Administration employee involved in evaluating proposals for a construction contract cannot disclose the terms of a competing proposal to a friend employed by a company bidding on the work. Prior to award of the contract, bid or proposal information is nonpublic information specifically protected by 41 U.S.C. 423.

Example 3: An employee is a member of a source selection team assigned to review the proposals submitted by several companies in response to an Army solicitation for spare parts. As a member of the evaluation team, the employee has access to proprietary information regarding the production methods of Alpha Corporation, one of the competitors. He may not use that information to assist Beta Company in drafting a proposal to compete for a Navy spare parts contract. The Federal Acquisition Regulation in 48 CFR parts 3, 14 and 15 restricts the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905 and 41 U.S.C. 423.

Example 4: An employee of the Nuclear Regulatory Commission inadvertently includes a document that is exempt from disclosure with a group of documents released in response to a Freedom of Information Act request. Regardless of whether the document is used improperly, the employee's disclosure does not violate this section because it was not a knowing unauthorized disclosure made for the purpose of furthering a private interest.

Example 5: An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.

§ 2635.704 Use of Government property.

(a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) Definitions. For purposes of this section:

(1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

(2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

Example 1: Under regulations of the General Services Administration at 41 CFR 101-35.201, an employee may make a personal long distance call charged to her personal calling card.

Example 2: An employee of the Commodity Futures Trading Commission whose office computer gives him access to a commercial service providing information for investors may not use that service for personal investment research.

Example 3: In accordance with Office of Personnel Management regulations at part 251 of this title, an attorney employed by the Department of Justice may be permitted to use her office word processor and agency photocopy equipment to prepare a paper to be presented at a conference sponsored by a professional association of which she is a member.

§ 2635.705 Use of official time.

(a) Use of an employee's own time. Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

Example 1: An employee of the Social Security Administration may use official time to engage in certain representational activities on behalf of the employee union of which she is a member. Under 5 U.S.C. 7131, this is a proper use of her official time even though it does not involve performance of her assigned duties as a disability claims examiner.

Example 2: A pharmacist employed by the Department of Veterans Affairs has been granted excused absence to participate as a speaker in a conference on drug abuse sponsored by the professional association to which he belongs. Although excused absence granted by an agency in accordance with guidance in chapter 630 of the Federal Personnel Manual allows an employee to be absent from his official duties without charge to his annual leave account, such absence is not on official time.

(b) Use of a subordinate's time. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Example 1: An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during nonduty hours constitutes an improper use of public office for private gain in violation of § 2635.702(a). Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time. Where the compensation is not adequate, however, the arrangement would involve a gift to the superior in violation of the standards in subpart C of this part.



Subpart H-OUTSIDE ACTIVITIES

§ 2635.801 Overview.

(a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees that are in addition to the principles and standards set forth in other subparts of this part. Several of these provisions apply to uncompensated as well as to compensated outside activities.

(b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:

- (1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;
- (2) Any agency-specific requirement for prior approval of outside employment or activities;
- (3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;
- (4) The limitations on paid and unpaid service as an expert witness;
- (5) The limitations on participation in professional organizations;
- (6) The limitations on paid and unpaid teaching, speaking, and writing; and
- (7) The limitations on fundraising activities.

(c) Outside employment and other outside activities of an employee must also comply with applicable provisions set forth in other subparts of this part and in supplemental agency regulations. These include the principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part and the prohibition against use of official position for an employee's private gain or for the private gain of any person with whom he has employment or business relations or is otherwise affiliated in a non-governmental capacity.

(d) In addition to the provisions of this and other subparts of this part, an employee who wishes to engage in outside employment or other outside activities must comply with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:

(1) *18 U.S.C. 201(b)*, which prohibits a public official from seeking, accepting or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty;

(2) *18 U.S.C. 201(c)*, which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act;

(3) *18 U.S.C. 203(a)*, which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restriction;

(4) *18 U.S.C. 205*, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restrictions;

(5) *18 U.S.C. 209*, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several exceptions that limit its applicability;

(6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which 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. In addition, *18 U.S.C. 219* generally prohibits any public official from being or acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under *22 U.S.C. 611 et seq.*;

(7) The Hatch Act Reform Amendments, 5 U.S.C. 7321 through 7326, which govern the political activities of executive branch employees; and

(8) The limitations on outside employment, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in § § 2636.305 through 2636.307 of this chapter.

§ 2635.802 Conflicting outside employment and activities.

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:

(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If, under the standards set forth in § § 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

Example 2: An employee of the Occupational Safety and Health Administration who was and is expected again to be instrumental in formulating new OSHA safety standards applicable to manufacturers that use chemical solvents has been offered a consulting contract to provide advice to an affected company in restructuring its manufacturing operations to comply with the OSHA standards. The employee should not enter into the consulting arrangement even though he is not currently working on OSHA standards affecting this industry and his consulting contract can be expected to be completed before he again works on such standards. Even though the consulting arrangement would not be a conflicting activity within the meaning of § 2635.802, it would create an appearance that the employee had used his official position to obtain the compensated outside business opportunity and it would create the further appearance of using his public office for the private gain of the manufacturer.

§ 2635.803 Prior approval for outside employment and activities.

When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

§ 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.

(a) Presidential appointees to full-time noncareer positions. A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(b) Covered noncareer employees. Covered noncareer employees, as defined in § 2636.303(a) of this chapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. Employees should consult the regulations implementing this limitation, which are contained in § § 2636.301 through 2636.304 of this chapter.

NOTE: In addition to the 15 percent limitation on outside earned income, covered noncareer employees are prohibited from receiving any compensation for: practicing a profession which involves a fiduciary relationship; affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship; serving as an officer or member of the board of any association, corporation or other



entity; or teaching without prior approval. Implementing regulations are contained in § § 2636.305 through 2636.307 of this chapter.

(c) Definitions. For purposes of this section:

(1) Outside earned income has the meaning set forth in § 2636.303(b) of this chapter, except that § 2636.303(b)(8) shall not apply.

(2) Presidential appointee to a full-time noncareer position means any employee who is appointed by the President to a full-time position described in 5 U.S.C. 5312 through 5317 or to a position that, by statute or as a matter of practice, is filled by Presidential appointment, other than:

(i) A position filled under the authority of 3 U.S.C. 105 or 3 U.S.C. 107(a) for which the rate of basic pay is less than that for GS-9, step 1 of the General Schedule;

(ii) A position, within a White House operating unit, that is designated as not normally subject to change as a result of a Presidential transition;

(iii) A position within the uniformed services; or

(iv) A position in which a member of the foreign service is serving that does not require advice and consent of the Senate.

Example 1: A career Department of Justice employee who is detailed to a policy-making position in the White House Office that is ordinarily filled by a noncareer employee is not a Presidential appointee to a full-time noncareer position.

Example 2: A Department of Energy employee appointed under § 213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a Presidential appointee to a full-time noncareer position.

§ 2635.805 Service as an expert witness.

(a) Restriction. 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 employee's participation is authorized by the agency under paragraph (c) of this section. Except as provided in paragraph (b) of this section, this restriction shall apply to a special Government employee only if he has participated as an employee or special Government employee in the particular proceeding or in the particular matter that is the subject of the proceeding.

(b) Additional restriction applicable to certain special Government employees.

(1) In addition to the restriction described in paragraph (a) of this section, a special Government employee described in paragraph (b)(2) of this section 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 his employing agency is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section.

(2) The restriction in paragraph (b)(1) of this section shall apply to a special Government employee who:

(i) Is appointed by the President;

(ii) Serves on a commission established by statute; or

(iii) Has served or is expected to serve for more than 60 days in a period of 365 consecutive days.

(c) Authorization to serve as an expert witness. Provided that the employee's testimony will not violate any of the principles or standards set forth in this part, authorization to provide expert witness service otherwise prohibited by paragraphs (a) and (b) of this section may be given by the designated agency ethics official of the agency in which the employee serves when:

(1) 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 designated agency ethics official determines that the employee's service as an expert witness is in the interest of the Government; or

(2) The designated agency ethics official determines that the subject matter of the testimony does not relate to the employee's official duties within the meaning of § 2635.807(a)(2)(i).

(d) Nothing in this section prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority.

§ 2635.806 Participation in professional associations. [Reserved]

§ 2635.807 Teaching, speaking and writing.

(a) Compensation for teaching, speaking or writing. Except as permitted by paragraph (a)(3) of this section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.

(1) Relationship to other limitations on receipt of compensation. The compensation prohibition contained in this section is in addition to any other limitation on receipt of compensation set forth in this chapter, including:

(i) The requirement contained in § 2636.307 of this chapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and

(ii) The prohibitions and limitations in § 2635.804 and in § 2636.304 of this chapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.

(2) Definitions. For purposes of this paragraph:

(i) Teaching, speaking or writing relates to the employee's official duties if:

(A) The activity is undertaken as part of the employee's official duties;

(B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter;

(C) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;

(D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in § 2635.703(b); or

(E) Except as provided in paragraph (a)(2)(i)(E)(4) of this section, the subject of the activity deals in significant part with:

(1) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period;

(2) Any ongoing or announced policy, program or operation of the agency; or

(3) In the case of a noncareer employee as defined in § 2636.303(a) of this chapter, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency.

(4) The restrictions in paragraphs (a)(2)(i)(E) (2) and (3) of this section do not apply to a special Government employee. The restriction in paragraph (a)(2)(i)(E)(1) of this section applies only during the current appointment of a special Government employee; except that if the special Government employee has not served or is not expected to serve for more than 60 days during the first year or any subsequent one year period of that appointment, the restriction applies only to particular matters involving specific parties in which the special Government employee has participated or is participating personally and substantially.

NOTE: Section 2635.807(a)(2)(i)(E) does not preclude an employee, other than a covered noncareer employee, from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility.

Example 1: The Director of the Division of Enforcement at the Commodity Futures Trading Commission has a keen interest in stamp collecting and has spent years developing his own collection as well as studying the field generally. He is asked by an international society of philatelists to give a series of four lectures on how to assess the value of American stamps. Because the subject does not relate to his official duties, the Director may accept compensation for the lecture series. He could not, however, accept a similar invitation from a commodities broker.

Example 2: A scientist at the National Institutes of Health, whose principal area of Government research is the molecular basis of the development of cancer, could not be compensated for writing a book which focuses specifically on the research she conducts in her position at NIH, and thus, relates to her official duties. However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers, provided that the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole. The book might include a chapter, among many other chapters, which discusses the molecular basis of cancer development. Additionally, the book could contain brief discussions of recent developments in cancer treatment, even though some of those developments are derived from NIH research, as long as it is available to the public.

Example 3: On his own time, a National Highway Traffic Safety Administration employee prepared a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gath-



ered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide deals in significant part with the programs or operations of NHTSA and, therefore, relates to the employee's official duties. On the other hand, the employee could receive royalties from the sale of a consumer's guide to values in used automobiles even though it contains a brief, incidental discussion of automobile safety standards developed by NHTSA.

Example 4: An employee of the Securities and Exchange Commission may not receive compensation for a book which focuses specifically on the regulation of the securities industry in the United States, since that subject concerns the regulatory programs or operations of the SEC. The employee may, however, write a book about the advantages of investing in various types of securities as long as the book contains only an incidental discussion of any program or operation of the SEC.

Example 5: An employee of the Department of Commerce who works in the Department's employee relations office is an acknowledged expert in the field of Federal employee labor relations, and participates in Department negotiations with employee unions. The employee may receive compensation from a private training institute for a series of lectures which describe the decisions of the Federal Labor Relations Authority concerning unfair labor practices, provided that her lectures do not contain any significant discussion of labor relations cases handled at the Department of Commerce, or the Department's labor relations policies. Federal Labor Relations Authority decisions concerning Federal employee unfair labor practices are not a specific program or operation of the Department of Commerce and thus do not relate to the employee's official duties. However, an employee of the FLRA could not give the same presentations for compensation.

Example 6: A program analyst employed at the Environmental Protection Agency may receive royalties and other compensation for a book about the history of the environmental movement in the United States even though it contains brief references to the creation and responsibilities of the EPA. A covered noncareer employee of the EPA, however, could not receive compensation for writing the same book because it deals with the general subject matter area affected by EPA programs and operations. Neither employee could receive compensation for writing a book that focuses on specific EPA regulations or otherwise on its programs and operations.

Example 7: An attorney in private practice has been given a one year appointment as a special Government employee to serve on an advisory committee convened for the purpose of surveying and recommending modification of procurement regulations that deter small businesses from competing for Government contracts. Because his service under that appointment is not expected to exceed 60 days, the attorney may accept compensation for an article about the anticompetitive effects of certain regulatory certification requirements even though those regulations are being reviewed by the advisory committee. The regulations which are the focus of the advisory committee deliberations are not a particular matter involving specific parties. Because the information is nonpublic, he could not, however, accept compensation for an article which recounts advisory committee deliberations that took place in a meeting closed to the public in order to discuss proprietary information provided by a small business.

Example 8: A biologist who is an expert in marine life is employed for more than 60 days in a year as a special Government employee by the National Science Foundation to assist in developing a program of grants by the Foundation for the study of coral reefs. The biologist may continue to receive compensation for speaking, teaching and writing about marine life generally and coral reefs specifically. However, during the term of her appointment as a special Government employee, she may not receive compensation for an article about the NSF program she is participating in developing. Only the latter would concern a matter to which the special Government employee is assigned.

Example 9: An expert on international banking transactions has been given a one-year appointment as a special Government employee to assist in analyzing evidence in the Government's fraud prosecution of owners of a failed savings and loan association. It is anticipated that she will serve fewer than 60 days under that appointment. Nevertheless, during her appointment, the expert may not accept compensation for an article about the fraud prosecution, even though the article does not reveal nonpublic information. The prosecution is a particular matter that involves specific parties.

(ii) Agency has the meaning set forth in § 2635.102(a), except that any component of a department designated as a separate agency under § 2635.203(a) shall be considered a separate agency.

(iii) Compensation includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities. Unless accepted under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111 or 7342, or an agency gift acceptance statute, it includes transportation, lodgings and meals, whether provided in kind, by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred. It does not include:

(A) Items offered by any source that could be accepted from a prohibited source under subpart B of this part;

(B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place;

(C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking or writing activity; or

(D) In the case of an employee other than a covered noncareer employee as defined in *5 CFR 2636.303(a)*, travel expenses, consisting of transportation, lodgings or meals, incurred in connection with the teaching, speaking or writing activity.

NOTE to Paragraph (a)(2)(iii): Independent of § 2635.807(a), other authorities, such as *18 U.S.C. 209*, in some circumstances may limit or entirely preclude an employee's acceptance of travel expenses. In addition, employees who file financial disclosure reports should be aware that, subject to applicable thresholds and exclusions, travel and travel reimbursements accepted from sources other than the United States Government must be reported on their financial disclosure reports.

Example 1 to paragraph (a)(2)(iii): A GS-15 employee of the Forest Service has developed and marketed, in her private capacity, a speed reading technique for which popular demand is growing. She is invited to speak about the technique by a representative of an organization that will be substantially affected by a regulation on land management which the employee is in the process of drafting for the Forest Service. The representative offers to pay the employee a \$ 200 speaker's fee and to reimburse all her travel expenses. She may accept the travel reimbursements, but not the speaker's fee. The speaking activity is related to her official duties under § 2635.807(a)(2)(i)(C) and the fee is prohibited compensation for such speech; travel expenses incurred in connection with the speaking engagement, on the other hand, are not prohibited compensation for a GS-15 employee.

Example 2 to paragraph (a)(2)(iii): Solely because of her recent appointment to a Cabinet-level position, a Government official is invited by the Chief Executive Officer of a major international corporation to attend firm meetings to be held in Aspen for the purpose of addressing senior corporate managers on the importance of recreational activities to a balanced lifestyle. The firm offers to reimburse the official's travel expenses. The official may not accept the offer. The speaking activity is related to official duties under § 2635.807(a)(2)(i)(B) and, because she is a covered noncareer employee as defined in § 2636.303(a) of this chapter, the travel expenses are prohibited compensation as to her.

Example 3 to paragraph (a)(2)(iii): A GS-14 attorney at the Federal Trade Commission (FTC) who played a lead role in a recently concluded merger case is invited to speak about the case, in his private capacity, at a conference in New York. The attorney has no public speaking responsibilities on behalf of the FTC apart from the judicial and administrative proceedings to which he is assigned. The sponsors of the conference offer to reimburse the attorney for expenses incurred in connection with his travel to New York. They also offer him, as compensation for his time and effort, a free trip to San Francisco. The attorney may accept the travel expenses to New York, but not the expenses to San Francisco. The lecture relates to his official duties under paragraphs (a)(2)(i)(E)(1) and (a)(2)(i)(E)(2) of § 2635.807, but because he is not a covered noncareer employee as defined in § 2636.303(a) of this chapter, the expenses associated with his travel to New York are not a prohibited form of compensation as to him. The travel expenses to San Francisco, on the other hand, not incurred in connection with the speaking activity, are a prohibited form of compensation. If the attorney were a covered noncareer employee he would be barred from accepting the travel expenses to New York as well as the travel expenses to San Francisco.

Example 4 to paragraph (a)(2)(iii): An advocacy group dedicated to improving treatments for severe pain asks the National Institutes of Health (NIH) to provide a conference speaker who can discuss recent advances in the agency's research on pain. The group also offers to pay the employee's travel expenses to attend the conference. After performing the required conflict of interest analysis, NIH authorizes acceptance of the travel expenses under *31 USC 1353* and the implementing General Services Administration regulation, as codified under 41 CFR chapter 304, and authorizes an employee to undertake the travel. At the conference the advocacy group, as agreed, pays the employee's hotel bill and provides several of his meals. Subsequently the group reimburses the agency for the cost of the employee's airfare and some additional meals. All of the payments by the advocacy group are permissible. Since the employee is speaking officially and the expense payments are accepted under *31 USC 1353*, they are not prohibited compensation under § 2635.807(a)(2)(iii). The same result would obtain with respect to expense payments made by non-Government sources properly authorized under an agency gift acceptance statute, the Government Employees Training Act, *5 USC 4111*, or the foreign gifts law, *5 USC 7342*.

(iv) Receive means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

(A) Paid to another person, including a charitable organization, on the basis of designation, recommendation or other specification by the employee; or

(B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

(v) Particular matter involving specific parties has the meaning set forth in § 2637.102(a)(7) of this chapter.



(vi) Personal and substantial participation has the meaning set forth in § 2635.402(b)(4).

(3) Exception for teaching certain courses. Notwithstanding that the activity would relate to his official duties under paragraphs (a)(2)(i) (B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentations by the employee if the course is offered as part of:

(i) The regularly established curriculum of:

(A) An institution of higher education as defined at 20 U.S.C. 1141(a);

(B) An elementary school as defined at 20 U.S.C. 2891(8); or

(C) A secondary school as defined at 20 U.S.C. 2891(21); or

(ii) A program of education or training sponsored and funded by the Federal Government or by a State or local government which is not offered by an entity described in paragraph (a)(3)(i) of this section.

Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though a substantial portion of the course deals with cost accounting principles applicable to contracts with the Government.

Example 2: An attorney employed by the Equal Employment Opportunity Commission may accept compensation for teaching a course at a state college on the subject of Federal employment discrimination law. The attorney could not accept compensation for teaching the same seminar as part of a continuing education program sponsored by her bar association because the subject of the course is focused on the operations or programs of the EEOC and the sponsor of the course is not an accredited educational institution.

Example 3: An employee of the National Endowment for the Humanities is invited by a private university to teach a course that is a survey of Government policies in support of artists, poets and writers. As part of his official duties, the employee administers a grant that the university has received from the NEH. The employee may not accept compensation for teaching the course because the university has interests that may be substantially affected by the performance or nonperformance of the employee's duties. Likewise, an employee may not receive compensation for any teaching that is undertaken as part of his official duties or that involves the use of nonpublic information.

(b) Reference to official position. An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking, except that:

(1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking or writing, provided that his title or position is given no more prominence than other significant biographical details;

(2) 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; and

(3) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank in connection with his teaching, speaking or writing.

NOTE: Some agencies may have policies requiring advance agency review, clearance, or approval of certain speeches, books, articles or similar products to determine whether the product contains an appropriate disclaimer, discloses nonpublic information, or otherwise complies with this section.

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data on all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.

Example 2: A doctor just employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the article also contains a disclaimer, concurred in by the CDC, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the CDC.

Example 3: An employee of the Federal Deposit Insurance Corporation has been asked to give a speech in his private capacity, without compensation, to the annual meeting of a committee of the American Bankers Association on the need for banking reform. The employee may be described in his introduction at the meeting as an employee of the Federal Deposit Insurance Corporation provided that other pertinent biographical details are mentioned as well.

§ 2635.808 Fundraising activities.

An employee may engage in fundraising only in accordance with the restrictions in part 950 of this title on the conduct of charitable fundraising in the Federal workplace and in accordance with paragraphs (b) and (c) of this section.

(a) Definitions. For purposes of this section:

(1) Fundraising means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) Participation in the conduct of an event means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech. Waiver of a fee for attendance at an event by a participant in the conduct of that event does not constitute a gift for purposes of subpart B of this part.

NOTE: This section does not prohibit fundraising for a political party, candidate for partisan political office, or partisan political group. However, there are statutory restrictions that apply to political fundraising. For example, under the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323(a), employees may not knowingly solicit, accept, or receive a political contribution from any person, except under limited circumstances. In addition, employees are prohibited by 18 U.S.C. 607 from soliciting or receiving political contributions in Federal offices, and, except as permitted by the Hatch Act Reform Amendments, are prohibited by 18 U.S.C. 602 from knowingly soliciting political contributions from other employees.

Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost \$ 150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.

(3) Official speech means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in § 2635.807(a)(2)(i)(E), or on matters of Administration policy on which the employee has been authorized to speak.

Example 1: The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a nonprofit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light initiative, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she were to conclude her official speech with a request for donations to the nonprofit organization.

Example 2: A charitable organization is sponsoring a two-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has invited the Secretary of Education to give a speech on federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under § 2635.204(g)(1), he may partake of the meal provided to him at the dinner.

(4) Personally solicit means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral



remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of § 2635.203(d). It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: An employee of the Department of Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.

(b) Fundraising in an official capacity. An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties. When authorized to participate in an official capacity, an employee may use his official title, position and authority.

Example 1: Because participation in his official capacity is authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.

(c) Fundraising in a personal capacity. An employee may engage in fundraising in his personal capacity provided that he does not:

(1) Personally solicit funds or other support from a subordinate or from any person:

(i) Known to the employee, if the employee is other than a special Government employee, to be a prohibited source within the meaning of § 2635.203(d); or

(ii) Known to the employee, if the employee is a special Government employee, to be a prohibited source within the meaning of § 2635.203(d)(4) that is a person whose interests may be substantially affected by performance or nonperformance of his official duties;

(2) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or

(3) Engage in any action that would otherwise violate this part.

Example 1: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy.

Example 2: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at § 2635.704 regarding use of Government property.

Example 3: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

§ 2635.809 Just financial obligations.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.

Subpart I-RELATED STATUTORY AUTHORITIES

§ 2635.901 General.

In addition to the standards of ethical conduct set forth in subparts A through H of this part, there are a number of statutes that establish standards to which an employee's conduct must conform. The list set forth in § 2635.902 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability. While it includes references to several of the basic conflict of inter-

est statutes whose standards are explained in more detail throughout this part, it does not include references to statutes of more limited applicability, such as statutes that apply only to officers and employees of the Department of Defense.

§ 2635.902 Related statutes.

- (a) The prohibition against solicitation or receipt of bribes (*18 U.S.C. 201(b)*).
- (b) The prohibition against solicitation or receipt of illegal gratuities (*18 U.S.C. 201(c)*).
- (c) The prohibition against seeking or receiving compensation for certain representational services before the Government (*18 U.S.C. 203*).
- (d) The prohibition against assisting in the prosecution of claims against the Government or acting as agent or attorney before the Government (*18 U.S.C. 205*).
- (e) The post-employment restrictions applicable to former employees (*18 U.S.C. 207*, with implementing regulations at parts 2637 and 2641 of this chapter).
- (f) The prohibition on certain former agency officials' acceptance of compensation from a contractor (*41 U.S.C. 423(d)*).
- (g) The prohibition against participating in matters affecting an employee's own financial interests or the financial interests of other specified persons or organizations (*18 U.S.C. 208*).
- (h) The actions required of certain agency officials when they contact, or are contacted by, offerors or bidders regarding non-Federal employment (*41 U.S.C. 423(c)*).
- (i) The prohibition against receiving salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (*18 U.S.C. 209*).
- (j) The prohibition against gifts to superiors (*5 U.S.C. 7351*).
- (k) The prohibition against solicitation or receipt of gifts from specified prohibited sources (*5 U.S.C. 7353*).
- (l) The prohibition against fraudulent access and related activity in connection with computers (*18 U.S.C. 1030*).
- (m) The provisions governing receipt and disposition of foreign gifts and decorations (*5 U.S.C. 7342*).
- (n) [Reserved]
- (o) The prohibitions against certain political activities (*5 U.S.C. 7321 through 7326* and *18 U.S.C. 602, 603, 606* and *607*).
- (p) The prohibitions against disloyalty and striking (*5 U.S.C. 7311* and *18 U.S.C. 1918*).
- (q) The general prohibition (*18 USC 219*) against acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (*22 U.S.C. 611 through 621*).
- (r) The prohibition against employment of a person convicted of participating in or promoting a riot or civil disorder (*5 U.S.C. 7313*).
- (s) The prohibition against employment of an individual who habitually uses intoxicating beverages to excess (*5 U.S.C. 7352*).
- (t) The prohibition against misuse of a Government vehicle (*31 U.S.C. 1344*).
- (u) The prohibition against misuse of the franking privilege (*18 U.S.C. 1719*).
- (v) The prohibition against fraud or false statements in a Government matter (*18 U.S.C. 1001*).
- (w) The prohibition against concealing, mutilating or destroying a public record (*18 U.S.C. 2071*).
- (x) The prohibition against counterfeiting or forging transportation requests (*18 U.S.C. 508*).
- (y) The restrictions on disclosure of certain sensitive Government information under the Freedom of Information Act and the Privacy Act (*5 U.S.C. 552* and *552a*).
- (z) The prohibitions against disclosure of classified information (*18 U.S.C. 798* and *50 U.S.C. 783(a)*).
- (aa) The prohibition against disclosure of proprietary information and certain other information of a confidential nature (*18 U.S.C. 1905*).
- (bb) The prohibitions on disclosing and obtaining certain procurement information (*41 U.S.C. 423(a)* and (b)).
- (cc) The prohibition against unauthorized use of documents relating to claims from or by the Government (*18 U.S.C. 285*).
- (dd) The prohibition against certain personnel practices (*5 U.S.C. 2302*).



- (ee) The prohibition against interference with civil service examinations (*18 U.S.C. 1917*).
- (ff) The restrictions on use of public funds for lobbying (*18 U.S.C. 1913*).
- (gg) The prohibition against participation in the appointment or promotion of relatives (*5 U.S.C. 3110*).
- (hh) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (*18 U.S.C. 211*).
- (ii) The prohibition against conspiracy to commit an offense against or to defraud the United States (*18 U.S.C. 371*).
- (jj) The prohibition against embezzlement or conversion of Government money or property (*18 U.S.C. 641*).
- (kk) The prohibition against failing to account for public money (*18 U.S.C. 643*).
- (ll) The prohibition against embezzlement of the money or property of another person that is in the possession of an employee by reason of his employment (*18 U.S.C. 654*).

§ 2638.702 Definitions.

For purposes of this subpart:

Agency supplemental standards means those regulations published by an agency in concurrence with the Office of Government Ethics under *5 CFR 2635.105*.

Employee includes officers of the uniformed services and special Government employees, as defined in *18 U.S.C. 202(a)*.

Federal conflict of interest statutes means *18 U.S.C. 202-203, 205, and 207-209*.

Principles means the Principles of Ethical Conduct, Part I of Executive Order 12674, as modified by Executive Order 12731.

Standards means the Standards of Ethical Conduct for Employees of the Executive Branch, *5 CFR part 2635*.

§ 2640.103 Prohibition.

(a) Statutory prohibition. Unless permitted by *18 U.S.C. 208(b) (1)-(4)*, an employee is prohibited by *18 U.S.C. 208(a)* from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The restrictions of *18 U.S.C. 208* are described more fully in *5 CFR 2635.401 and 2635.402*.

(1) Particular matter. The term "particular matter" includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. The particular matters covered by this part include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Overseas Private Investment Corporation decides to hire a contractor to conduct EEO training for its employees. The award of a contract for training services is a particular matter.

Example 2: The spouse of a high level official of the Internal Revenue Service (IRS) requests a meeting on behalf of her client (a major U.S. corporation) with IRS officials to discuss a provision of IRS regulations governing depreciation of equipment. The spouse will be paid a fee by the corporation for arranging and attending the meeting. The consideration of the spouse's request and the decision to hold the meeting are particular matters in which the spouse has a financial interest.

Example 3: A regulation published by the Department of Agriculture applicable only to companies that operate meat packing plants is a particular matter.

Example 4: A change by the Department of Labor to health and safety regulations applicable to all employers in the United States is not a particular matter. The change in the regulations is directed to the interests of a large and diverse group of persons.

Example 5: The allocation of additional resources to the investigation and prosecution of white collar crime by the Department of Justice is not a particular matter. Similarly, deliberations on the general merits of an omnibus bill such as the Tax Reform Act of 1986 are not sufficiently focused on the interests of specific persons, or a discrete and identifiable group of persons to constitute participation in a particular matter.

Example 6: The recommendations of the Council of Economic Advisors to the President about appropriate policies to maintain economic growth and stability are not particular matters. Discussions about economic growth policies are directed to the interests of a large and diverse group of persons.

Example 7: The formulation and implementation of the response of the United States to the military invasion of a U.S. ally is not a particular matter. General deliberations, decisions and actions concerning a response are based on a consideration of the political, military, diplomatic and economic interests of every sector of society and are too diffuse to be focused on the interests of specific individuals or entities. However, at the time consideration is given to actions focused on specific individuals or entities, or a discrete and identifiable class of individuals or entities, the matters under consideration would be particular matters. These would include, for example, discussions whether to close a particular oil pumping station or pipeline in the area where hostilities are taking place, or a decision to seize a particular oil field or oil tanker.

Example 8: A legislative proposal for broad health care reform is not a particular matter because it is not focused on the interests of specific persons, or a discrete and identifiable class of persons. It is intended to affect every person in the United States. However, consideration and implementation, through regulations, of a section of the health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter.

(2) Personal and substantial participation. To participate "personally" means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate "substantially" means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Example 1 to paragraph (a)(2): An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns \$ 20,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered "substantial" as defined in the statute.

(3) Direct and predictable effect.

(i) A particular matter will have a "direct" effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this part.

(ii) A particular matter will have a "predictable" effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Example 1: An attorney at the Department of Justice is working on a case in which several large companies are defendants. If the Department wins the case, the defendants may be required to reimburse the Federal Government for their failure to adequately perform work under several contracts with the Government. The attorney's spouse is a salaried employee of one of the companies, working in a division that has no involvement in any of the contracts. She does not participate in any bonus or benefit plans tied to the profitability of the company, nor does she own stock in the company. Because there is no evidence that the case will have a direct and predictable effect on whether the spouse will retain her job or maintain the level of her salary, or whether the company will undergo any reorganization that would affect her interests, the attorney would not have a disqualifying financial interest in the matter. However, the attorney must consider, under the requirements of § 2635.502 of this chapter, whether his impartiality would be questioned if he continues to work on the case.

Example 2: A special Government employee (SGE) whose principal employment is as a researcher at a major university is appointed to serve on an advisory committee that will evaluate the safety and effectiveness of a new medical device to regulate arrhythmic heartbeats. The device is being developed by Alpha



Medical Inc., a company which also has contracted with the SGE's university to assist in developing another medical device related to kidney dialysis. There is no evidence that the advisory committee's determinations concerning the medical device under review will affect Alpha Medical's contract with the university to develop the kidney dialysis device. The SGE may participate in the committee's deliberations because those deliberations will not have a direct and predictable effect on the financial interests of the researcher or his employer.

Example 3: The SGE in the preceding example is instead asked to serve on an advisory committee that has been convened to conduct a preliminary evaluation of the new kidney dialysis device developed by Alpha Medical under contract with the employee's university. Alpha's contract with the university requires the university to undertake additional testing of the device to address issues raised by the committee during its review. The committee's actions will have a direct and predictable effect on the university's financial interest.

Example 4: An engineer at the Environmental Protection Agency (EPA) was formerly employed by Waste Management, Inc., a corporation subject to EPA's regulations concerning the disposal of hazardous waste materials. Waste Management is a large corporation, with less than 5% of its profits derived from handling hazardous waste materials. The engineer has a vested interest in a defined benefit pension plan sponsored by Waste Management which guarantees that he will receive payments of \$ 500 per month beginning at age 62. As an employee of EPA, the engineer has been assigned to evaluate Waste Management's compliance with EPA hazardous waste regulations. There is no evidence that the engineer's monitoring activities will affect Waste Management's ability or willingness to pay his pension benefits when he is entitled to receive them at age 62. Therefore, the EPA's monitoring activities will not have a direct and predictable effect on the employee's financial interest in his Waste Management pension. However, the engineer should consider whether, under the standards set forth in 5 *CFR* 2635.502, a reasonable person would question his impartiality if he acts in a matter in which Waste Management is a party.

(b) Disqualifying financial interests. For purposes of 18 *U.S.C.* 208(a) and this part, the term financial interest means the potential for gain or loss to the employee, or other person specified in section 208, as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate. Additionally, a disqualifying financial interest might derive from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter.

Example 1: An employee of the Department of the Interior owns transportation bonds issued by the State of Minnesota. The proceeds of the bonds will be used to fund improvements to certain State highways. In her official position, the employee is evaluating an application from Minnesota for a grant to support a State wildlife refuge. The employee's ownership of the transportation bonds does not create a disqualifying financial interest in Minnesota's application for wildlife funds because approval or disapproval of the grant will not in any way affect the current value of the bonds or have a direct and predictable effect on the State's ability or willingness to honor its obligation to pay the bonds when they mature.

Example 2: An employee of the Bureau of Land Management owns undeveloped land adjacent to Federal lands in New Mexico. A portion of the Federal land will be leased by the Bureau to a mining company for exploration and development, resulting in an increase in the value of the surrounding privately owned land, including that owned by the employee. The employee has a financial interest in the lease of the Federal land to the mining company and, therefore, cannot participate in Bureau matters involving the lease unless he obtains an individual waiver pursuant to 18 *U.S.C.* 208(b)(1).

Example 3: A special Government employee serving on an advisory committee studying the safety and effectiveness of a new arthritis drug is a practicing physician with a specialty in treating arthritis. The drug being studied by the committee would be a low cost alternative to current treatments for arthritis. If the drug is ultimately approved, the physician will be able to prescribe the less expensive drug. The physician does not own stock in, or hold any position, or have any business relationship with the company developing the drug. Moreover, there is no indication that the availability of a less expensive treatment for arthritis will increase the volume and profitability of the doctor's private practice. Accordingly, the physician has no disqualifying financial interest in the actions of the advisory committee.

(c) Interests of others. The financial interests of the following persons will serve to disqualify an employee to the same extent as the employee's own interests:

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

Example 1: An employee of the Consumer Product Safety Commission (CPSC) has two minor children who have inherited shares of stock from their grandparents in a company that manufactures small appliances. Unless an exemption is applicable under § 2640.202 or he obtains a waiver under *18 U.S.C. 208(b)(1)*, the employee is disqualified from participating in a CPSC proceeding to require the manufacturer to remove a defective appliance from the market.

Example 2: A newly appointed employee of the Department of Housing and Urban Development (HUD) is a general partner with three former business associates in a partnership that owns a travel agency. The employee knows that his three general partners are also partners in another partnership that owns a HUD-subsidized housing project. Unless he receives a waiver pursuant to *18 U.S.C. 208(b)(1)* permitting him to act, the employee must disqualify himself from particular matters involving the HUD-subsidized project which his general partners own.

Example 3: The spouse of an employee of the Department of Health and Human Services (HHS) works for a consulting firm that provides support services to colleges and universities on research projects they are conducting under grants from HHS. The spouse is a salaried employee who has no direct ownership interest in the firm such as through stockholding, and the award of a grant to a particular university will have no direct and predictable effect on his continued employment or his salary. Because the award of a grant will not affect the spouse's financial interest, section 208 would not bar the HHS employee from participating in the award of a grant to a university to which the consulting firm will provide services. However, the employee should consider whether her participation in the award of the grant would be barred under the impartiality provision in the Standards of Ethical Conduct for Employees of the Executive Branch at *5 CFR 2635.502*.

(d) Disqualification. Unless the employee is authorized to participate in the particular matter by virtue of an exemption or waiver described in subpart B or subpart C of this part, or the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignments should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) Documentation. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics, is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement, or is required to do so by agency supplemental regulation issued pursuant to *5 CFR 2635.105*. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: The supervisor of an employee of the Department of Education asks the employee to attend a meeting on his behalf on developing national standards for science education in secondary schools. When the employee arrives for the meeting, she realizes one of the participants is the president of Education Consulting Associates (ECA), a firm which has been awarded a contract to prepare a bulletin describing the Department's policies on science education standards. The employee's spouse has a subcontract with ECA to provide the graphics and charts that will be used in the bulletin. Because the employee realizes that the meeting will involve matters relating to the production of the bulletin, the employee properly decides that she must disqualify herself from participating in the discussions. After withdrawing from the meeting, the employee should notify her supervisor about the reason for her disqualification. She may elect to put her disqualification statement in writing, or to simply notify her supervisor orally. She may also elect to notify appropriate coworkers about her need to disqualify herself from this matter.

(e) Divestiture of a disqualifying financial interest. Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, an employee is no longer prohibited from acting in the particular matter.

(1) Voluntary divestiture. An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) Directed divestiture. An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a) of this chapter, or if the agency determines in accordance with § 2635.403(b) of this chapter that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.



(3) Eligibility for special tax treatment. An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) Official duties that give rise to potential conflicts. Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

C. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE TREASURY DEPARTMENT (5 CFR PART 3101)

LEXIS PUBLISHING'S CODE OF FEDERAL REGULATIONS

Copyright (C) 2005, LEXIS Publishing

*** THIS SECTION IS CURRENT THROUGH THE AUGUST 4, 2005 ISSUE OF ***

*** THE FEDERAL REGISTER ***

TITLE 5 -- ADMINISTRATIVE PERSONNEL

CHAPTER XXI -- DEPARTMENT OF THE TREASURY

PART 3101 -- SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

§ 3101.101 General.

(a) Purpose. In accordance with *5 CFR 2635.105*, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue. See 31 CFR part 0, Department of the Treasury Employee Rules of Conduct.

(b) Bureau instructions. With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures necessary to implement this part and part 2635 of this *title*. See *5 CFR 2635.105(c)*.

(c) Definition of "agency designee". As used in this part and in part 2635 of this title, the term "agency designee" refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. See *5 CFR 2635.102(b)*.

§ 3101.102 Designation of separate agency components.

Pursuant to *5 CFR 2635.203(a)*, each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and *5 CFR 2635.807* governing teaching, speaking or writing:

- (a) Bureau of Alcohol, Tobacco and Firearms (ATF);
- (b) Bureau of Engraving and Printing;
- (c) Bureau of the Public Debt;
- (d) Federal Law Enforcement Training Center;
- (e) Financial Management Service;
- (f) Internal Revenue Service (IRS);
- (g) Office of the Comptroller of the Currency (OCC);
- (h) Office of the Inspector General;
- (i) Office of Thrift Supervision (OTS);
- (j) United States Customs Service (USCS);
- (k) United States Mint; and
- (l) United States Secret Service.

For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

NOTE: As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices, including the Financial Crimes Enforcement Network) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under *5 CFR 2635.203(d)* and for identifying an employee's "agency" under *5 CFR 2635.807* governing teaching, speaking and writing.



§ 3101.103 Prohibition on purchase of certain assets.

(a) General prohibition. Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

(1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or

(2) Sold under the direction or incident to the functions of the employee's bureau.

(b) Exceptions. The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint or foreign gifts deposited with the Department pursuant to 5 U.S.C. 7342 that an employee may purchase pursuant to 41 CFR part 101-49.

(c) Waiver. An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

NOTE: Employees of the OCC and OTS are subject to additional limitations on the purchase of assets that are set out in bureau-specific rules contained in § 3101.108 and 3101.109.

§ 3101.104 Outside employment.

(a) General requirement for prior approval. All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or any provision of this part.

NOTE: Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities that are set out in bureau-specific rules contained in this part.

(b) Bureau responsibilities. Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

§ 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.

The following rules apply to the employees of the Bureau of Alcohol, Tobacco and Firearms and are in addition to § 3101.101 through 3101.104:

(a) Prohibited financial interests. Except as provided in this section, no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) Waiver. An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which the ATF's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

§ 3101.106 Additional rules for Internal Revenue Service employees.

The following rules apply to the employees of the Internal Revenue Service and are in addition to § 3101.101 through 3101.104:

(a) Prohibited recommendations. Employees of the IRS shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant, or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) Prohibited outside employment. Involvement by an employee of the IRS in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 *CFR* 2635.802:

- (1) Performance of legal services involving Federal, State or local tax matters;
- (2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue;
- (3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;
- (4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and
- (5) Engaging in the preparation of tax returns for compensation, gift, or favor.

(c) Seasonal employees. Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities other than those prohibited by paragraph (b) of this section without obtaining prior written permission.

§ 3101.107 Additional rules for Legal Division employees.

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101 through 3101.104:

(a) Application of rules of other bureaus. In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) Prohibited outside employment. Pursuant to 5 *CFR* 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

- (1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or
- (2) Interpret any statute, regulation or rule administered or issued by the Department.

§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101-3101.104:

(a) Prohibited financial interests

(1) Prohibition. Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own, directly or indirectly, securities of any commercial bank (including both national and State-chartered banks) or commercial bank affiliate, including a bank holding company.

(2) Definition of "securities". For purposes of paragraphs (a)(1) and (a)(3) of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) Exceptions. Nothing in this section prohibits an OCC employee, or spouse or minor child of an OCC employee, from:

(i) Investing in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 25 percent of its assets in securities of one or more commercial banks (including both national and State-chartered banks) and commercial bank affiliates (including bank holding companies) and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;



(ii) Investing in the publicly traded securities of a holding company of a nonbank bank or of a retailing firm that owns or sponsors a credit card bank as defined by the Competitive Equality Banking Act of 1987, except that an employee who owns such an interest must be disqualified from participating in the regulation or supervision of the nonbank bank or the credit card bank;

(iii) Using a commercial bank or commercial bank affiliate as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(b) Prohibited borrowing

(1) Prohibition on employee borrowing. Except as provided in this section, no covered OCC employee shall seek or obtain credit from any national bank or from an officer, director, employee, or subsidiary of any national bank.

(2) Prohibition on borrowing by a spouse or minor child. The prohibition in paragraph (b)(1) of this section shall apply to the spouse or minor child of a covered OCC employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OCC employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) Covered OCC employee. For purposes of the prohibitions on borrowing contained in paragraphs (b)(1) and (b)(2) of this section, "covered OCC employee" means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on borrowing contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(4) Exceptions

(i) Non-examiners. A covered OCC employee, other than an examiner, or the spouse or minor child of such a covered OCC employee, may seek or obtain a credit card from a national bank if the credit card is sought or obtained on terms and conditions no more favorable than those offered to the general public.

(ii) Examiners. (A) An examiner, or the spouse or minor child of an examiner to whom the prohibition in paragraph (b)(1) of this section applies, may seek or obtain a credit card from a national bank the examiner is not assigned to examine so long as the credit card is obtained on terms and conditions no more favorable than those offered to the general public and the examiner submits to the Chief Counsel or designee a written disqualification from the examination of that bank. Such a recusal would not prevent an examiner from participating in other bank supervision matters outside the scope of an examination, such as licensing or supervisory policy decisions.

(B) For purposes of this section, examiners are assigned to examine a bank if they work:

(1) In a district, and the bank is one they examine or that is assigned to their Assistant Deputy Comptroller or rating official; or

(2) In Large Bank Supervision or Washington, D.C. Headquarters, and the bank is one to which they are regularly or otherwise assigned.

(5) Pre-existing credit. This section does not prohibit a covered OCC employee, or spouse or minor child of a covered OCC employee, from retaining a loan from a national bank on its original terms if the loan was incurred prior to employment by the OCC or as a result of the sale or transfer of a loan to a national bank or the conversion or merger of the lender into a national bank. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibitions in paragraphs (b)(1) and (b)(2) of this section.

(c) Restrictions arising from third party relationships. If any of the entities listed in paragraphs (c)(1) through (c)(7) of this section have securities that an OCC employee would be prohibited from having by paragraph (a) of this section, or loans or extensions of credit that a covered OCC employee would be prohibited from obtaining under paragraph (b) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title, or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(d) Prohibited recommendations. Employees of the OCC shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale or other divestiture of securities of any commercial bank or commercial bank affiliate, including a bank holding company.

(e) Prohibited purchase of assets. No employee of the OCC, or spouse or minor child of an OCC employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a national bank or national bank affiliate, including a bank holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(f) Outside employment

(1) Prohibition on outside employment. No covered OCC employee shall perform services for compensation for any bank, banking or loan association, or national bank affiliate, or for any officer, director or employee of, or for any person connected in any capacity with a bank, banking or loan association or national bank affiliate.

(2) Covered OCC employee. For purposes of the prohibitions on outside employment contained in paragraph (f)(1) of this section, "covered OCC employee" means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on outside employment contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(g) Waivers. An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 3101.109 Additional rules for Office of Thrift Supervision employees.

The following rules apply to the employees of the Office of Thrift Supervision and are in addition to §§ 3101.101 through 3101.104:

(a) Covered OTS employee. For purposes of this section, the term "covered OTS employee" means:

(1) An OTS examiner;

(2) An employee in a position at OTS grade 17 or above; and

(3) Any other OTS employee specified in an OTS instruction or manual issuance whose duties and responsibilities, as determined by the Director of the OTS or his or her designee, require application of the prohibitions contained in this section to ensure public confidence that the OTS's programs are conducted impartially and objectively.

(b) Prohibited financial interests

(1) Prohibition. Except as provided in paragraphs (b)(3) and (g) of this section, no covered OTS employee, or spouse or minor child of a covered OTS employee, shall own, directly or indirectly, securities of any OTS-regulated savings association or savings association holding company.

(2) Definition of "securities". For purposes of paragraphs (b)(1) and (b)(3) of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured



and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) Exceptions. Nothing in this section prohibits a covered OTS employee, or spouse or minor child of a covered OTS employee, from:

(i) Investing in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 25 percent of its assets in securities of one or more OTS-regulated savings associations or savings association holding companies and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in certain non-financial holding companies whose principal business is unrelated to the financial services industry and which are identified as such on a list maintained by the Chief Counsel of the OTS;

(iii) Using a savings association as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(c) Prohibited borrowing

(1) Prohibition on employee borrowing. Except as provided in this section, no covered OTS employee shall seek or obtain any loan or extension of credit from any OTS-regulated savings association or from an officer, director, employee, or subsidiary of any such association.

(2) Prohibition on borrowing by a spouse or minor child. The prohibition in paragraph (c)(1) of this section shall apply to the spouse or minor child of a covered OTS employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OTS employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) Exceptions

(i) Covered employees other than examiners. Except for examiners, a covered OTS employee, or the spouse or minor child of a covered OTS employee, may obtain a credit card from an OTS-regulated savings association or its subsidiary if the credit card is issued and held on terms and conditions no more favorable than those offered the general public.

(ii) Examiners. An examiner, or the spouse or minor child of an examiner, may obtain or hold a credit card issued by an OTS-regulated savings association or its subsidiary, if:

(A) The savings association is not headquartered in the examiner's region;

(B) The examiner is not assigned to examine the savings association;

(C) The terms and conditions are no more favorable than those offered to the general public; and

(D) The examiner submits a written disqualification from examining that savings association. The examiner nonetheless may participate in other supervisory or regulatory matters involving the savings association.

(4) Pre-existing credit. This section does not prohibit a covered OTS employee, or spouse or minor child of a covered OTS employee, from retaining a loan from an OTS-regulated savings association on its original terms if the loan was incurred prior to April 30, 1991, or employment by the OTS, whichever date is later, or as a result of the sale or transfer of the loan to a savings association or the conversion or merger of the lender into an OTS-regulated savings association. Any renewal or renegotiation of a pre-existing loan or extension of credit is covered by paragraphs (c)(1) and (c)(2) of this section.

(d) Restrictions arising from third party relationships. If any of the entities listed in paragraphs (d)(1) through (d)(7) of this section have securities that a covered OTS employee would be prohibited from having by paragraph (b) of this section, or loans or extensions of credit that a covered OTS employee would be prohibited from obtaining under paragraph (c) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or this part, including an appearance of misuse of position or loss of impartiality. This paragraph (d) applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(e) Prohibited recommendations. Employees of the OTS shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale, or other divestiture of securities of any OTS-regulated savings association or savings association holding company.

(f) Prohibited purchase of assets. No covered OTS employee, or spouse or minor child of a covered OTS employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a savings association or savings association affiliate, including a savings association holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(g) Waivers. An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 3101.110 Additional rules for United States Customs Service employees.

The following rules apply to the employees of the United States Customs Service and are in addition to §§ 3101.101 through 3101.104:

(a) Prohibition on outside employment. No employee of the USCS shall work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise.

(b) Restrictions arising from employment of relatives. If the spouse of a USCS employee, or other relative who is dependent on or resides with a USCS employee, is employed in a position that the employee would be prohibited from occupying by paragraph (a) of this section, the employee shall file a report of family member employment with his or her supervisor. Supervisors shall forward such reports to the appropriate Regional Counsel for transmittal to the Chief Counsel. The employee shall be disqualified from participation in any matter involving the relative or the relative's employer unless an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, authorizes the employee to participate in the matter using the standard in § 2635.502(d) of this title.



D. TREASURY RULES OF CONDUCT (31 CFR PART 0)

LEXIS PUBLISHING'S CODE OF FEDERAL REGULATIONS

Copyright (C) 2005, LEXIS Publishing

*** THIS SECTION IS CURRENT THROUGH THE AUGUST 4, 2005 ISSUE OF ***

*** THE FEDERAL REGISTER ***

TITLE 31 -- MONEY AND FINANCE: TREASURY

SUBTITLE A -- OFFICE OF THE SECRETARY OF THE TREASURY

PART 0 -- DEPARTMENT OF THE TREASURY EMPLOYEE RULES OF CONDUCT

SUBPART A -- GENERAL PROVISIONS

Subpart A-GENERAL PROVISIONS

§ 0.101 Purpose.

(a) The Department of the Treasury Employee Rules of Conduct (Rules) are separate from and additional to the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) (5 CFR part 2635) and the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Treasury Supplemental Standards) (to be codified at 5 CFR part 3101). The Rules prescribe employee rules of conduct and procedure and provide for disciplinary action for the violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards, and any other rule, regulation or law governing Department employees.

(b) The Rules are not all-inclusive and may be modified by interpretive guidelines and procedures issued by the Department's bureaus. The absence of a specific published rule of conduct covering an action does not constitute a condonation of that action or indicate that the action would not result in corrective or disciplinary action.

§ 0.102 Policy.

(a) All employees and officials of the Department are required to follow the rules of conduct and procedure contained in the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards of Ethical Conduct, the Employee Responsibilities and Conduct (5 CFR part 735), and any bureau issued rules.

(b) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be instructed to take remedial or corrective action to eliminate the conflict. Remedial action may include, but is not limited to:

- (1) Reassignment of work duties;
- (2) Disqualification from a particular assignment;
- (3) Divestment of a conflicting interest; or
- (4) Other appropriate action.

(c) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be disciplined in proportion to the gravity of the offense committed, including removal. Disciplinary action will be taken in accordance with applicable laws and regulations and after consideration of the employee's explanation and any mitigating factors. Further, disciplinary action may include any additional penalty prescribed by law.

§ 0.103 Definitions.

The following definitions are used throughout this part: (a) Adviser means a person who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee as those terms are defined in § 0.103.

(b) Bureau means:

- (1) Bureau of Alcohol, Tobacco and Firearms;
- (2) Bureau of Engraving and Printing;
- (3) Bureau of the Public Debt;
- (4) Departmental Offices;
- (5) Federal Law Enforcement Training Center;
- (6) Financial Management Service;

- (7) Internal Revenue Service;
- (8) Legal Division;
- (9) Office of the Comptroller of the Currency;
- (10) Office of the Inspector General;
- (11) Office of Thrift Supervision;
- (12) United States Customs Service;
- (13) United States Mint;
- (14) United States Secret Service; and
- (15) Any organization designated as a bureau by the Secretary pursuant to appropriate authority.

(c) Person means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution as specified in *5 CFR 2635.102(k)*.

(d) Regular employee or employee means an officer or employee of the Department of the Treasury but does not include a special Government employee.

(e) Special Government employee means an officer or employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period. See *18 U.S.C. 202(a)*.

§ 0.104 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.

The Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO). The DAEO is responsible for managing the Department's ethics program, including coordinating ethics counseling and interpreting questions of conflicts of interest and other matters that arise under the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules. See *5 CFR 2638.203*. The Senior Counsel for Ethics is the Alternate Designated Agency Ethics Official.

§ 0.105 Deputy Ethics Official.

The Chief Counsel or Legal Counsel for a bureau, or a designee, is the Deputy Ethics Official for that bureau. The Legal Counsel for the Financial Crimes Enforcement Network is the Deputy Ethics Official for that organization. It is the responsibility of the Deputy Ethics Official to give authoritative advice and guidance on conflicts of interest and other matters arising under the Executive Branch-wide Standards, Treasury Supplemental Standards, and the Rules.

§ 0.106 Bureau Heads.

Bureau heads or designees are required to:

(a) Provide all employees with a copy of Executive Order 12674, as amended by Executive Order 12731, the Executive Branch-wide Standards, the Treasury Supplemental Standards and the Rules; provide all new employees with an explanation of the contents and application of the Executive Branch-wide Standards, Treasury Supplemental Standards and the Rules; and provide all departing employees with an explanation of the applicable post-employment restrictions contained in *18 U.S.C. 207* and *5 CFR* part 2641 and any other applicable law or regulation.

(b) Provide guidance and assistance to supervisors and employees in implementing and adhering to the rules and procedures included in the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules; obtain any necessary legal advice or interpretation from the Designated Agency Ethics Official or a Deputy Ethics Official; and inform employees as to how and from whom they may obtain additional clarification or interpretation of the Executive Branch-wide Standards, Treasury Supplemental Standards, Rules, and any other relevant law, rule or regulation.

(c) Take appropriate corrective or disciplinary action against an employee who violates the Executive Branch-wide Standards, Treasury Supplemental Standards or Rules, or any other applicable law, rule or regulation, and against a supervisor who fails to carry out his responsibilities in taking or recommending corrective or disciplinary action when appropriate against an employee who has committed an offense.

§ 0.107 Employees.

(a) Employees are required to:

(1) Read and follow the rules and procedures contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, and Rules;



(2) Request clarification or interpretation from a supervisor or ethics official if the application of a rule contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, or Rules is not clear;

(3) Report to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms, Customs Service, Internal Revenue Service, or Secret Service, any information indicating that an employee, former employee, contractor, subcontractor, or potential contractor engaged in criminal conduct or that an employee or former employee violated the Executive Branch-wide Standards or the Treasury Supplemental Standards or Rules. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the appropriate Chief or Legal Counsel or the Deputy General Counsel, who shall report such information to the Inspector General or appropriate internal affairs office; and

(4) Report to the Inspector General information defined in paragraph (a)(3) of this section relating to foreign intelligence or national security, as covered in Executive Order 12356. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the Deputy General Counsel, who shall report such information to the Inspector General.

(b) The confidentiality of the source of the information reported to the Inspector General or the internal affairs office under this section will be maintained to the extent appropriate under the circumstances.

Subpart B—RULES OF CONDUCT

§ 0.201 Political Activity.

(a) Employees may:

(1) Take an active part in political management or in political campaigns to the extent permitted by law (5 U.S.C. 7321-7326); and

(2) Vote as they choose and express their opinions on political subjects and candidates.

(b) Employees may not use their official authority or influence to interfere with or affect election results.

(c) Employees may be disqualified from employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

NOTE: The Hatch Act Reform Amendments of 1993 significantly reduced the statutory restrictions on the political activity of most Department employees. However, career members of the Senior Executive Service and employees of the Secret Service, the Internal Revenue Service, Office of Criminal Investigation, the Customs Service, Office of Investigative Programs, and the Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement, remain subject to significant restrictions on their political activities.

§ 0.735-202 Strikes.

Employees shall not strike against the Government.

§ 0.203 Gifts or gratuities from foreign governments.

(a) The United States Constitution prohibits employees from accepting gifts, emoluments, offices, or titles from a foreign government without the consent of the Congress. Congress has consented to an employee accepting and retaining a gift from a foreign government that is of minimal value and offered as a souvenir or mark of courtesy, unless otherwise prohibited by bureau regulation (5 U.S.C. 7342). Minimal value is prescribed in 41 CFR part 101-49 and was set at \$ 225.00 on the date that the Rules became effective.

(b) All gifts exceeding minimal value, the refusal of which would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, shall be accepted and deposited with the Department within sixty days of acceptance. If the gift is travel or expenses for travel taking place entirely outside the United States, it shall be reported within thirty days (see 5 U.S.C. 7342(c)(1)(B)(ii)).

(c) As used in paragraph (b) of this section, Deposit with the Department means delivery to the Department Gift Unit or other depository as authorized by the Treasury Directive on Foreign Gifts (Treasury Directive 61-04).

(d) All foreign gifts must be reported as prescribed in the Treasury Directive on Foreign Gifts (Treasury Directive 61-04).

§ Use of controlled substances and intoxicants.

Employees shall not sell, use or possess controlled substances or intoxicants in violation of the law while on Department property or official duty, or use a controlled substance or intoxicant in a manner that adversely affects their work performance.

§ 0.205 Care of documents and data.

(a) Employees shall not conceal, remove, alter, destroy, mutilate or access documents or data in the custody of the Federal Government without proper authority.

(b) Employees are required to care for documents according to Federal law and regulation, and Department procedure (*18 U.S.C. 2071, 5 U.S.C. 552, 552a*).

(c) The term documents includes, but is not limited to, any writing, recording, computer tape or disk, blueprint, photograph, or other physical object on which information is recorded.

§ 0.206 Disclosure of information.

Employees shall not disclose official information without proper authority, pursuant to Department or bureau regulation. Employees authorized to make disclosures should respond promptly and courteously to requests from the public for information when permitted to do so by law (*31 CFR 1.9, 1.10, and 1.28(b)*).

§ 0.207 Cooperation with official inquiries.

Employees shall respond to questions truthfully and under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest when directed to do so by competent Treasury authority.

§ 0.208 Falsification of official records.

Employees shall not intentionally make false, misleading or ambiguous statements, orally or in writing, in connection with any matter of official interest. Matters of official interest include among other things: Transactions with the public, government agencies or fellow employees; application forms and other forms that serve as a basis for appointment, reassignment, promotion or other personnel action; vouchers; leave records and time and attendance records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with an employee's duties; and reports of any moneys or securities received, held or paid to, for or on behalf of the United States.

§ 0.209 Use of Government vehicles.

Employees shall not use Government vehicles for unofficial purposes, including to transport unauthorized passengers. The use of Government vehicles for transporting employees between their domiciles and places of employment must be authorized by statute (See, e.g., *31 U.S.C. 1344*).

§ 0.210 Conduct while on official duty or on Government property.

Employees must adhere to the regulations controlling conduct when they are on official duty or in or on Government property, including the Treasury Building, Treasury Annex Building and grounds; the Bureau of Engraving and Printing buildings and grounds; the United States Mint buildings and grounds; the grounds of the Federal Law Enforcement Training Center; and Treasury-occupied General Services Administration buildings and grounds (see *31 CFR parts 91, 407, 605, 700*).

§ 0.211 Soliciting, selling and canvassing.

Employees shall not solicit, make collections, canvass for the sale of any article, or distribute literature or advertising in any space occupied by the Department without appropriate authority.

§ 0.212 Influencing legislation or petitioning Congress.

(a) Employees shall not use Government time, money, or property to petition a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling, through the proper channels, of matters relating to legislation in which the Department of the Treasury has an interest.

(b) Employees, individually or collectively, may petition Congress or Members of Congress or furnish information to either House of Congress when not using Government time, money or property (*5 U.S.C. 7211*).

§ 0.213 General conduct prejudicial to the Government.

Employees shall not engage in criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government.



§ 0.214 Nondiscrimination.

(a) Employees shall not discriminate against or harass any other employee, applicant for employment or person dealing with the Department on official business on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability. Sexual harassment is a form of sex discrimination and is prohibited by this section.

(b) An employee who engages in discriminatory conduct may be disciplined under these rules. However, this section does not create any enforceable legal rights in any person.

§ 0.215 Possession of weapons and explosives.

(a) Employees shall not possess firearms, explosives, or other dangerous or deadly weapons, either openly or concealed, while on Government property or official duty.

(b) The prohibition in paragraph (a) of this section does not apply to employees who are required to possess weapons or explosives in the performance of their official duties.

§ 0.216 Privacy Act.

Employees involved in the design, development, operation, or maintenance of any system of records or in maintaining records subject to the Privacy Act of 1974, as amended (*5 U.S.C. 552a*), shall comply with the conduct regulations delineated in *31 CFR 1.28(b)*.

§ 0.217 Personal financial interests.

(a) Employees may hold the following financial interests without violating *18 U.S.C. 208(a)*:

- (1) The stocks or bonds of a publicly traded corporation with a value of \$ 1000 or less; and
- (2) The stocks or bonds in the investment portfolio of a diversified mutual fund in which an employee has invested.

(b) The Department has found that the financial interests listed in paragraph (a) of this section are too remote and inconsequential to affect the integrity of an employee's service.

Subpart C-SPECIAL GOVERNMENT EMPLOYEES

§ 0.301 Applicability of subpart B.

The rules of conduct contained in subpart B of this part apply to special Government employees employed with the Treasury Department. The regulations contained in § 0.201 of subpart B, concerning political activity, apply to special Government employees only on the days that they serve the Department. Treasury bureaus are responsible for informing special Government employees employed with them of the applicability of bureau specific statutes or regulations.

§ 0.302 Service with other Federal agencies.

A special Government employee serving concurrently in the Department and in a Federal agency other than the Department is required to inform the Department and the agency in which he serves of the arrangement so that appropriate administrative measures may be taken.

Subpart D- ADVISERS TO THE DEPARTMENT

§ 0.401 Advisers to the Department.

(a) An adviser or advisory committee member includes an individual who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee of the Department. Questions concerning whether an individual serves the Department in the capacity of an adviser, employee, or special Government employee shall be addressed to the Designated Agency Ethics Official or a Deputy Ethics Official.

(b) Advisers or advisory committee members are not required to follow the Rules and are not generally required by the Department to file financial disclosure statements; nevertheless, they should be guided by the regulations in this part covering such issues as public disclosure of official information (§ 0.206), conduct (§ 0.211 and § 0.213), and gifts or gratuities from Foreign governments (§ 0.203).

E. IRS RULES OF CONDUCT

INTERNAL REVENUE SERVICE
RULES OF CONDUCT

THESE RULES SUPPLEMENT THE MINIMUM STANDARDS OF CONDUCT
DEPARTMENT OF THE TREASURY

ACKNOWLEDGMENT OF RECEIPT

I have received a copy of Document 7098, Rules of Conduct.

I am aware that it is my obligation to familiarize myself with its contents

Table of Contents

Foreword

Chapter 1 — Introduction

Chapter 2 — Employee Conduct

Scope and Introduction

Introduction	211
Employee Obligations	212
Deputy Agency Ethics Official	213
Matters of Official Interest	214
Responding to Questions	214.1
Testimony in State or Local Courts	214.2
Reporting Allegations or Information of Employee Misconduct	214.3
Reporting Attempted Bribes	214.4
False Statements	214.5
Trade Secrets, Style of Work, etc.	214.6
Service Operations	214.7
Tax Information —Confidentiality	214.8
Matters Concerning Official Activities	215
Loyalty and Strikes	215.1
Performance of Duty	215.2
Observance of Duty Hours	215.3
Firearms	215.4
Appereance	215.5
Matters Concerning Personal Activities	216
Personal Associations and Activities	216.2
Use of Intoxicants	216.3
Gambling	216.4
Lending or Borrowing	216.5
Indebtedness	216.6
Tax Obligations	216.7
Political Activity	216.8
Soliciting for Employee Organizations	216.9
Matters Concerning Government Property, etc	217
Accountability for Money and Property	217.1
Use of Government Vehicles	217.2
Influencing Legislation	217.3
Use of Pocket Commissions, Enforcement Badges, and ID Cards	217.4



Computers	217.5
Outside Employment and Business Activity	220
General Rule	221
Consultants, Experts, etc	222
Principles	223
Prohibited Activities	224
Service Rule	224.1
Legal Employment or Practice	224.1.(a)
Appereance on Behalf of Taxpayers	224.1.(b)
Accounting	224.1.(c)
Bookkeeping	224.1.(d)
Preparation of Tax Returns for Compensation	224.1.(e)
Restricted Activities	225
Service Rule	225.1
Miscellaneous Outside Activities	225.2
Speeches and Publications	225.2(1)
Legal Employment or Practice	225.2(2)
Bookkeeping and Accounting	225.2(3)
Gambling Casinos and Establishments	225.2(4)
Financial Counseling/Planning Service	225.2(5)
Holding Public Office	225.2(6)
Teaching/Instructing of Tax Related Courses	225.2(7)
Applying for Permission	226
Appeals	227
Seasonals	228
Activities Which Do Not Require Prior Approval	229
General	229.1
General Examples	229.2
Conflicts of Interest	230
General Provisions	231
Self-Disqualification From Certain Assignments	232
Purchase of Government Property	233
Gifts and Gratuities	234
From Sources Outside of the Service	234.1
Service Rule	234.1(1)
Exceptions and Guidelines	234.1(2)
Use of Sound Judgment	234.1(3)
From Other Employees	234.2
From Foreign Governments	234.3
Relations With the Public	235
Recommending Attorneys, Accountants	235.1
Transactions with Taxpayers and Their Representatives	235.2
Payment or Reimbursement of Travel and Subsistence Expenses by State, Counties, or Municipalities or by Certain Tax-Exempt Organizations	235.3
Statements of Employment and Financial Interest	240
Appendix	
Department of the Treasury, Minimum Standards of Conduct	

FOREWORD

Public confidence in the integrity and dependability of the service is crucial to the accomplishment of the IRS mission. It can be instilled and maintained only if every contact with the public reflects high ethical standards and our commitment to perform our work conscientiously, courteously, and effectively.

Our mission cannot be accomplished without a dedicated and well trained workforce. We recognize that the commitment of the workforce to the mission of the Service is largely dependent on the commitment of the Service toward its workforce. To foster a high degree of commitment, the IRS as an organization will be dedicated to improving and maintaining the quality of worklife. We will plan and implement human resource programs with the same sense of purpose and dedication that is demonstrated in administering tax programs.

These commitments, by and to our workforce, serve the public good by encouraging both dedication to quality performance and proper administration of our tax laws.

CHAPTER 1: INTRODUCTION

In accordance with the basic mission of the Internal Revenue Service to foster, to the fullest extent possible, voluntary compliance with all Revenue laws and regulations thereunder, the Service has issued the Rules of Conduct contained herein.

Confidence in the Service and faith in its dependability and integrity are factors having a vital impact on our ability to carry out our purpose. We can maintain the public confidence only to the extent that every one of our contacts with the public reflects the highest ethical and moral standards.

In addition to our daily assigned tasks, each of us has an important public relations role to play. Not only must we act with complete propriety, but we must be sure that none of our actions can be interpreted otherwise. Courtesy, fairness, and competence must mark all our relationships with the public. We must be reasonable and as ready to recognize the rights of the taxpayer as we are to protect the rights of the Government.

Achievement of these attitudes by all employees will build public esteem and make a major contribution to realizing maximum voluntary compliance.

In this very serious sense, these Rules of Conduct are promulgated. No desire exists to restrict our employees unduly or unnecessarily in their personal or official conduct. These rules have been adopted because of the contribution they make to strengthening public confidence in the Service.

These Rules of Conduct are designed to provide you with full notice of your responsibilities. Although they prescribe conduct required of all employees of the Internal Revenue Service they are not to be considered all inclusive. The absence of a specific rule covering an act which tends to discredit an employee or the Service, does not mean that such an act is condoned, is permissible, or would not call for, and result in, corrective action or adverse action, including separation when considered necessary, or in the interest of the Internal Revenue Service.

It is hoped that you will read these carefully and will abide by their spirit as well as their letter. Each of us can take pride in belonging to an organization which places such a high premium on ethical standards in official and personal conduct. We can also take pride in being part of an organization which contributes so much to the growth and strength of our nation.

Employees are required to familiarize themselves with the contents of these Rules of Conduct and are obligated to abide by them. Decisions in personnel matters involving disciplinary action will be based on the assumption that employees are familiar with the contents of this document.

Additional guidance regarding these Rules of Conduct may be obtained from your immediate supervisor. Guidance regarding the appropriate administrative and procedural requirements attendant to the Rules of Conduct are contained in Internal Revenue Manual 0735.1. The IRM is available for reference and use from either your immediate supervisor or your personnel office.

CHAPTER 2: RULES CONCERNING EMPLOYEE CONDUCT

210 Scope and Introduction

211 Introduction

In order for the Service to serve the public interest, the Service and its employees must hold and maintain the confidence and esteem of the public we serve. To achieve this, employees are expected to conduct themselves in their official relations with the public and their fellow employees, in a courteous, businesslike, and diplomatic manner. Conduct which does not conform to these rules, or related statutes or regulations, which directly impacts on an employee's position, official duties, or the Service, may subject the employee to appropriate



disciplinary action. The absence of a specific rule relating to an employee's action which may impact on their official duties or the Service, does not mean that such an act is either condoned or may not result in disciplinary action. These rules supplement the Department of the Treasury Minimum Standards of Conduct, 31 CFR Part O, which also apply and which are attached.

212 *Employee Obligations*

Fundamental to the effectiveness of these rules and their administration is the obligation of each employee to become familiar with them, abide by them, and seek the necessary information from his or her supervisor regarding interpretation of the rules.

213 *Deputy Agency Ethics Official*

The Director, General Legal Services Division, Washington, DC, is the Service's "Deputy Agency Ethics Official (DAEO)." The duties of the DAEO include providing Service employees with counseling regarding interpretation or application of these rules of conduct, related statutes or regulations, and conflict of interest questions. Employees desiring to avail themselves of the DAEO's services regarding matters of immediate or future personal interest or involving prospective employment, should consult their Personnel Office or the appropriate collective bargaining agreement, as applicable.

214 *Matters of Official Interest*

214.1 *Responding to Questions*

When directed by Inspection or other competent authority, employees must testify, provide information, or respond to questions (under oath when required) concerning matters of official interest.

214.2 *Testimony in State or Local Courts*

Employees may not provide official records or testimony regarding their employment or official duties, to any person, officer, or court, state or local, without receiving express authority. Upon receipt of any subpoena, employees will promptly seek guidance from their supervisor.

214.3 *Reporting Allegations or Information of Employee Misconduct*

All employees must promptly report, directly to Inspection, any information or allegation coming to their attention which indicates that another employee may have committed a crime, including violation of any tax law. Employees must also promptly report other acts of employee misconduct such as tardiness and misuse of leave to their immediate supervisor. Reports of misconduct involving an Inspection employee will be made directly to the Director, Internal Security Division, or the Assistant Commissioner (Inspection).

214.4 *Reporting Attempted Bribes*

Attempts to bribe Service employees represent flagrant attacks on the integrity of the Service and its employees. To assist the Service in preserving the highest level of integrity, employees should be perceptive and alert to such overtures and take the following action when bribery overtures are received. Avoid any statement or implication that the employee will or will not accept the bribe. Attempt to hold the matter in abeyance. Report the matter directly to the nearest office of Inspection promptly or as soon as practical. Avoid unnecessary discussion of the matter with anyone.

214.5 *False Statements*

Employees will not intentionally make false or misleading verbal or written statements in matters of official interest.

214.6 *Trade Secrets, Style of Work, etc.*

Employees may not disclose, in any manner, information coming to their attention during the course of their employment or official duties which concerns or relates to the trade secrets, style of work, or device, of any person, firm, or entity except as provided by law.

214.7 *Service Operations*

Employees may not disclose, without authority, any provision of the IRM or internal management document designated per IRM 1272, "Official Use Only/" or any information concerning an investigation by the Service. When questions arise regarding the propriety of releasing specific information, employees should consult their supervisor.

214.8 *Tax Information — Confidentiality*

Employees may not disclose any tax return or information pertinent to a tax return except as provided in the Internal Revenue Code. Civil and criminal sanctions for established violations are prescribed in the

Internal Revenue Code and the Privacy Act of 1974. IRM 1272, Disclosure of Official Information Handbook, contains detailed guidance on the treatment of tax returns and return information.

215 *Matters Concerning Official Activities*

215.1 Loyalty and Strikes

Employees must adhere to their oath of office and appointment affidavit which includes provisions on loyalty and prohibitions against strikes.

215.2 Performance of Duty

Employees are expected to conscientiously perform their duties to the Government and the public; respond readily to the direction of their supervisors; and conduct their relations with fellow employees in a manner which does not cause dissension or discord.

215.3 Observance of Duty Hours

Employees must observe designated duty hours and be punctual in reporting for work and returning from lunch and breaks. Leave is to be used in accordance with its intended purpose and must be approved in advance whenever possible.

215.4 Firearms

Only a Criminal Investigator, GS 1811, may carry or have in his or her vehicle a firearm while conducting official business. However, even those employees are forbidden to unnecessarily display a firearm in public.

215.5 Appearance

Employees are expected to groom themselves in a manner fitting to the surroundings into which their work assignments take them.

216 *Matters Concerning Personal Activities*

216.1 Reserved

216.2 Personal Associations and Activities

Employees will be held responsible for any public discredit which may result from unjustified association with criminal or notoriously disreputable persons.

216.3 Use of Intoxicants

Employees may not use intoxicating beverages while on official duty or in a manner adversely affecting their work performance. Employees will also be held responsible for misconduct or public discredit stemming from their use of intoxicants while off duty.

216.4 Gambling

Employees may not engage in any form of illegal gambling, nor gamble while on Government property or official time.

216.5 Lending or Borrowing

The lending or borrowing of money between Service employees, either frequently, or in substantial sums, is prohibited.

216.6 Indebtedness

Employees are expected to manage their private financial affairs and handle personal debts and obligations in a manner which will not cause embarrassment to the Service. Employees are expected to meet all just financial obligations, (i.e., those acknowledged by the employee or reduced to judgment by a court), especially those imposed by law, such as Federal, State, and local taxes.

216.7 Tax Obligations

Employees will timely and properly file all required tax returns.

216.8 Political Activity

The Hatch Act places specific restrictions on employee political activity. In addition, the Service imposes a further restriction: employees may not wear or display political badges or buttons when dealing with the public. Ignorance of the law does not excuse an employee's violation. The prescribed penalty for an established violation is immediate removal or suspension without pay for not less than 30 days. Specific guidance related to this activity may be obtained from Personnel.



216.9 Soliciting for Employee Organizations

Employees may not solicit from any organization or person outside the Service anything of value for any employee organization or employee welfare group.

217 *Matters Concerning Government Property, etc.*

217.1 Accountability for Money and Property

Employees may not use Government property of and kind including official documents and data for other than officially approved activities. Employees are expected to protect and conserve all Government property entrusted or issued to them; promptly report the loss of, or damage to, property entrusted to them; and return all Government property upon separation from the Service.

217.2 Use of Government Vehicles

Employees may not use, or authorize the use of, Government owned or leased vehicles for other than official purposes, nor may they transport any other person who is not on official business.

217.3 Influencing Legislation

Employees must not use Government time, money, or property to influence members of Congress to favor or oppose legislation.

217.4 Use of Pocket Commissions, Enforcement Badges, and ID Cards

Pocket Commissions, enforcement badges, and various identification cards issued to employees are to be used to establish identification or authority in connection with official duties. They may be used for personal identification purposes, e.g., for cashing checks or proof of employment; but may not be used to exert influence or obtain, either directly or indirectly, privileges, favors, or rewards.

217.5 Computers

Employees must make every effort to assure the security and prevent the unauthorized disclosure of protected information data in the use of Government owned or leased computers. In addition, employees may not use any Service computer system for other than official purposes.

220 *Outside Employment and Business Activity*

221 *General Rule*

Employees of the Internal Revenue Service enjoy the maximum freedom possible to engage in outside employment or business activity, whether performed outside official hours of duty or while in an approved leave status, as long as consistent with the Service's functional responsibilities established by statute and regulation. Nevertheless, the Service's extremely sensitive mission and the attendant importance of public relations necessitate certain restrictions. Thus, as a general rule, employees may engage in any outside employment or business activity provided such activity is not prohibited. The approval or disapproval of requests for outside employment or business activities are dependent on, and subject to, individual considerations relevant in the judgment of the approving authority. Such considerations include an employee's position, grade, or geographical locale. Whether a salary is involved is usually not relevant to such determinations.

222 *Consultants, Experts, etc.*

These rules do not apply to consultants, experts, or other Special Government employees as defined in 18 USC 202.

223 *Principles*

1. The fundamental principles which govern the permissibility of outside employment are that:
 - a. The outside activity does not place the employee in a situation where there may be a possible conflict, or the appearance of a conflict, between his or her private interests and his or her official duties and responsibilities.
 - b. The outside activity (unless otherwise permitted) does not deal directly with any tax related matters.
 - c. The outside activity will not result in improper use of official information obtained in connection with the employee's Government duties or position.
 - d. The nature of employment or business activity or the hours to be devoted to such outside activity will not impair the employee's availability, capacity, or efficiency for the performance of his or her official duties.

- e. The employee will not in any manner advertise or make it known that he or she works for the Service in order to generate or enhance business.
- f. The employee will not do indirectly, i.e., in the name of or through family, that which he or she is prohibited to do directly. "Family" means persons within the following degree of kinship to the employee or spouse; parents, grandparents, children, grandchildren, or siblings.

224 *Prohibited Activities*

224.1 *Service Rule*

Employees may not engage in any outside employment or business activity which gives rise to a real or apparent conflict of interest. Such incompatible activities include:

- a. **Legal Employment or Practice**—Legal activities involving Federal, State, local tax matters, or any matter in which the United States is a party.
- b. **Appearance On Behalf of Taxpayers**—Appearing on behalf of any taxpayer as an attorney, agent, or representative before any governmental agency, federal, state, or local—in an action involving a tax matter except upon written authorization of the Commissioner of the Internal Revenue Service.
- c. **Accounting**—Engaging in accounting, the use, analysis, and interpretation of financial records when such activity involves tax matters.
- d. **Bookkeeping**—Engaging in bookkeeping, the recording of transactions, record making phase of accounting, when such activity is directly related to a tax determination.
- e. **Preparation of Tax Returns for Compensation**—Engaging in the preparation of tax returns for compensation, gift, or favor.

225 *Restricted Activities*

225.1 *Service Rule*

Employees must, prior to engaging in any outside employment or business activity, either with or without compensation, request and obtain written permission from the appropriate official. Subject to Section 224 such activities may be approved unless the activity would result in an actual or apparent conflict of interest. The following activities listed under Section 225.2 represent examples of areas of outside employment or business activity where an actual or apparent conflict of interest will most likely occur. As such, particular attention should be paid to this guidance by employees in seeking approval.

225.2 *Miscellaneous Outside Activities*

1. *Speeches and Publications*

- a. Public addresses and articles for publication, whether performed as an official duty or in a private capacity, which deal with official operations or policies of the Service or the Department of the Treasury, must be cleared in advance in accordance with current Service directives (See IRM 1(19)40.) Specific written permission in advance is necessary if the author is to be identified as a Service employee.
- b. Where any such activity is performed as an official duty, employees may not accept a fee, honorarium, or other compensation from any source other than the Federal Government. Acceptance of reimbursement for travel, lodging, meals, or nominal courtesies is governed by Section 234.1.
- c. Where any such activity is performed in a private capacity, employees may accept a fee, salary, or other compensation which is reasonable and in accordance with these rules.

2. *Legal Employment or Practice*

Outside employment and legal activities may be approved provided that employees may not advertise nor be affiliated with a firm and the activity is not remotely involved with tax law. For example, adoptions, title searches, law clerkships, and all legal services to immediate family are not considered to be involved with tax law.

3. *Bookkeeping and Accounting*

- a. Employees may only engage in the full range of bookkeeping activities, (the recording of transactions, record making phase of accounting), provided that such activity does not involve or influence a tax determination.
- b. Employees may be authorized to engage in bookkeeping and accounting activities which involve or influence a tax determination only in the following situations:



1. Where an employee, whose official duties could not influence a tax determination or collection, wishes to keep the books for a firm owned or run by his or her immediate family and the prospects are remote for conflict of interest.
2. Where the activity is for a civic, religious, educational or charitable nonprofit organization and is unpaid; and
3. Where the employee has been given permission to otherwise engage in a business with a spouse.

4. *Gambling Casinos and Establishments*

Employees may engage in employment at a paramutual betting establishment. However, generally, employees may not work at casinos or gambling establishments.

5. *Financial Counseling/Planning Service*

Generally, employees may engage in the sale or promotion of services in fields of finance, such as financial investment counseling/planning services or similar related activities, as long as they are not directly or indirectly related to tax matters.

6. *Holding Public Office*

To be permissible under the Hatch Act, "... political activity must be of a strictly local character completely unrelated to issues and candidates that are identified with national and state political parties." (Specific guidance related to this activity may be obtained from Personnel).

7. *Teaching/Instructing of Tax Related Courses*

Qualified employees may engage in part-time teaching/instructing of courses in taxation at institutes of good standing in the community, including practitioner institutes. Proper authorization in accordance with established procedures must be obtained in advance.

226 *Applying for Permission*

Except as provided in Section 228, employees requesting permission to engage in an activity must submit three completed copies of Form 7995, Outside Employment or Business Request, to their immediate supervisor; employees requesting an exception to the prohibitions of Section 224 will submit four completed copies of Form 7995. Employees will likewise be expected to provide any supplementary information requested by their supervisor, reviewers, or approving official to facilitate reviews of their requests.

227 *Appeals*

Employees who feel that they have grievances as a result of denials of permission to engage in outside employment or business activity, may appeal the disapproval decisions pursuant to IRM 0771.1, Grievance Handbook, or a negotiated grievance procedure, as applicable.

228 *Seasonals*

Seasonal employees may not engage in any activity described in Section 224. While in non-duty status, such employees may accept/engage in outside employment without obtaining prior written permission that is otherwise required. Upon return to duty status, the employee must submit a written request, Form 7995, if the outside employment activity continues.

229 *Activities Which Do Not Require Prior Approval*

229.1 *General*

Written permission is not required to engage in outside activities which are not considered to be employment or business. Although every specific activity is not covered, the general categories discussed below are furnished as basic guidelines.

229.2 *General Examples*

1. Membership and services (including holding of office) in civic, court, religious, educational, fraternal, social, community, veteran, and charitable organizations, including corporations, here such office or services do not entail the management of business type activity such as the direct operation of a commercial type clubhouse.
2. Membership and services (including holding of office) in Federal employee organizations and recognized Federal employee unions. However, employees in certain positions are prohibited from holding office in recognized employee organizations. If there is any doubt as to the propriety of accepting an office, the matter should be promptly referred to the servicing Personnel Office for decision.

3. Membership and services (including holding office) in local offices of legally authorized credit unions whether or not they are run by and for Service personnel. This includes paid bookkeeping work performed by the treasurer as well as part-time clerical or teller services.
4. Membership in investment club enterprises.
5. Services as a Notary Public.
6. Unpaid bookkeeping, preparation of tax returns and other forms required by the Service, and the maintenance of other records for civic, religious, educational, and charitable nonprofit organizations which are exempt from Federal income tax.
7. Sales of articles to coworkers, friends, relatives, and neighbors not involving sales to, and solicitation of, the general public. Such sales must not be solicited for or transacted during office hours or in space occupied by Treasury or Service offices.
8. Rental of personally owned property, real or personal. However, employees must seek written approval pursuant to Section 226 of this document if the extent or scope of such rental activities could lead others reasonably to conclude that employee is involved in the operation of a commercial business venture.
9. Minor services and odd jobs for friends, relatives, or neighbors.
10. Temporary (30 days or, less) emergency assistance in a family enterprise in case of an emergency, such as the death or serious illness of, or incapacitating accident to, a member of the family engaged in such business. This exception is to ensure that the employee will not, by administrative restrictions, be denied the right immediately to assume a share of the responsibilities in the family emergencies. Written permission is required if the need for such assistance continues beyond 30 calendar days or occurs more often than once in a calendar year.
11. Participation in fundraising drives as chairperson or in other capacities, subject to these conditions:
 - a. The fundraising drive must not be for any purpose or cause likely to reflect discredit or embarrassment on the Service or be in conflict with the interest of the Federal Government.
 - b. If the employee is to serve as chairperson of a fundraising drive, the drive must be under the auspices of nonprofit civic, religious, charitable, educational, fraternal, veteran, professional, scout, or social service organizations, or a Federal Government section of a drive.
12. Furnishing advice and assistance in the preparation of tax returns where there is no fee or other consideration.
13. Being custodian of one's child's property, or acting as administrator, executor, guardian, or attorney-in-fact for a relative or friend provided the duties do not entail operation of a business. Such services are not considered legal employment or practice. Acceptance of an executor's or trustee's fee is permissible if no part of the fee is specifically identified as payment for tax return preparation.

230 *Conflicts of Interest*

231 *General Provisions*

A conflict of interest is a situation in which a Service employee's private interest, usually of a financial or economic nature, conflicts or raises a reasonable question of conflict with the employee's public duties and responsibilities. A financial interest may be one involving the employee, the employee's spouse, minor child, partner, or organization in which the employee is serving as an officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangements concerning prospective employment. Employees must be alert and avoid any situation which creates a conflict of interest or creates a reasonable question of a conflict of interest with their official duties. Penalties prescribed by statute for established violations include both fine and/or imprisonment.

232 *Self-Disqualification From Certain Assignments*

An employee having been assigned any duty, responsibility, case, or other work assignment which might create a real or apparent conflict of interest must promptly bring the specific facts and circumstances to the attention of the employee's immediate supervisor, who will provide appropriate instructions. Likewise, employees must notify their immediate supervisors during the performance of duties already assigned in the event that changed personal circumstances (such as newly acquired interests, associations, or relationships) might create a real or apparent conflict of interest.



233 *Purchase of Government Property*

Employees may not directly or indirectly bid or purchase, at any sale of Government property, property under the direction, or incident to the functions of the Service. Employees may purchase any other Government property provided that they identify themselves to the disposing agency as an employee of the Service and are governed by the disposing agency's rules, if any, concerning sales to Government employees.

234 *Gifts and Gratuities*

234.1 *From Sources Outside of the Service*

1. *Service Rule*

- a. Except as provided below in paragraphs (2)(a) through (d) an employee may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, or loan; opportunity to purchase an item at cost, discount, or bargain price, unless such opportunity is available to the general public; or other thing of monetary value from a person or entity which:
 1. Has, or is seeking to obtain, contractual or other business or financial relations with the Treasury Department.
 2. Conducts operations or activities that are regulated by the Treasury Department; or
 3. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.
- b. Where circumstances do not permit rejection (for example, a gift received by mail), the employee will consult with his or her supervisor.

2. *Exceptions and Guidelines*

- a. Employees may accept gifts, entertainment, and food when the circumstances make it clear that obvious family or personal relationships are the exclusive factors.
- b. Employees, as a general rule, must not accept food and refreshments from taxpayers. However, the Service recognizes that circumstances can arise where its employees would be placed in awkward situations in refusing to accept food and refreshments. Accordingly, where circumstances would make it uncomfortable to refuse, acceptance of food and refreshments of nominal value on infrequent occasions, is permitted when such action occurs in the ordinary course of a luncheon or dinner meeting or other meeting where an employee may properly be in attendance.
- c. Employees in attendance in their official capacity, either as active participant or IRS Treasury representative, at organized functions which have been considered appropriate and important ones to attend because of the recognized benefits of such attendance to Treasury operations, may accept food and refreshments of nominal value on infrequent occasions.
- d. Employees may accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

3. *Employees must exercise sound judgment to comply with the intent of this rule.*

234.2 *From Other Employees*

Employees may not solicit a contribution from another employee for a gift to a person in a superior official position, nor make a donation for a gift to a person in a superior official position, nor may such superiors accept a gift from an employee receiving less pay than themselves. Employees may contribute to, or donate for, a voluntary gift of a nominal value for another employee made on a special occasion, such as marriage, illness, or retirement.

234.3 *From Foreign Governments*

The Constitution prohibits employees from accepting from foreign governments, except with the consent of Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 USC 7342 to the acceptance of certain specified gifts and decorations. Minimum value is periodically redefined by the Administrator of General Services. It is currently defined as having a maximum retail value in the United States of \$165 or less at the time of acceptance. If an employee accepts a tangible gift of more than minimum value, such a gift is deemed to have been accepted on behalf of the United States and, upon its acceptance by the employee, becomes the property of the United States. The employee must transfer such a gift to the Service within 60 days for appropriate disposal by the agency.

235 *Relations With the Public*

235.1 *Recommending Attorneys, Accountants*

Employees may not recommend, refer, or suggest, specifically or by implication, any attorney or accountant or firm of attorneys or accountants to a taxpayer in connection with any official business which involves or may involve the Service.

235.2 *Transactions With Taxpayers and Their Representatives*

Employees may not engage in any business or financial transaction with a taxpayer or their representative which may reasonably be construed as influencing or improperly relating to the past, present, or future performance of the employee's official duties.

235.3 *Payment or Reimbursement of Travel and Subsistence Expenses by State, Counties, or Municipalities, or by Certain Tax-Exempt Organizations*

1. An employee who has been authorized as an official duty to attend or participate in a tax forum or continuing professional education program, may accept payment or reimbursement of reasonable expenses for travel, lodging, and meals from any State, county, or municipal agency, or from an organization which has been determined to be tax exempt under section 501(c)(3) of title 26, United States Code, provided:

- a. Written approval is obtained in advance from a duly authorized approving official.
- b. Reimbursement or payment is limited to the actual expenses of round trip transportation not to exceed the cost of coach airfare plus necessary ground transportation, the cost of a standard single room at the forum or program site, and reasonable meal costs; and
- c. A written report of all expenses reimbursed or payments made is submitted to the approving official and maintained for a period of four years.

2. Pursuant to Delegation Order No. 189, (as revised), the appropriate approving officials for employees of the Service are the Deputy Commissioner for all Associate, Assistant and Regional Commissioners, and the Assistant Commissioners and Regional Commissioners for all employees under their own supervision. For employees of the Office of Chief Counsel, the appropriate approving officials are the Chief Counsel for all Regional Counsel and Deputies Chief Counsel, and the Regional Counsel and the Deputies Chief Counsel for all employees under their own supervision

240 *Statements of Employment and Financial Interest*

Executive Order 11222, the Ethics in Government Act, and 5 CFR 735 require the filing of certain statements of employment and financial interest by certain designated employees. Those employees required to file such statements will be appropriately contacted by their personnel offices.



F. EMPLOYEE CONDUCT AND ETHICS (IRM 30.4.8.5)

IRM 30.4.8.5 Date document last amended: 7-12-1990.
Employee Conduct and Ethics

1. This sets forth the minimum standards of conduct required of all employees in the Office of Chief Counsel. (See also, IRM 0735.1, Handbook for the Rules of Conduct, and Department of the Treasury, Minimum Standards of Conduct, 31 C.F.R. S0.735-1 et seq.)
2. Responsibility
 - a. Attorney personnel are also bound by the professional codes of the states where they are admitted to the bar. In addition, the Rules of Professional Conduct, American Bar Association, is recognized by this Office as a generally accepted ethical standard for attorneys. The Office of Chief Counsel will not discipline an attorney for a violation of these codes except to the extent a violation of same is also a violation of the aforementioned documents. A violation of a professional code could likewise be a violation of the IRS and Treasury rules of conduct if the violation of the code brought discredit upon the Service or the Treasury Department. Bringing discredit upon the Service or Treasury Department could subject the attorney to discipline by the Office of Chief Counsel.
 - b. It is the responsibility of each employee to seek information and guidance from their Regional Counsel or Assistant Chief Counsel if he or she is in doubt as to what is considered acceptable conduct in specific situations. Regional Counsel and Assistant Chief Counsel will seek clarification from the Director, Office of Human Resources whenever necessary.
 - c. In the National Office, the Director, Office of Human Resources is responsible for seeing that each employee receives a copy of The Rules of Conduct (Document 7098) and 31 C.F.R. S0.735-1 et seq., and all subsequent changes. Regional Counsel are responsible for seeing that persons under their supervision receive these documents.
3. A Form 8556, Acknowledgment of Receipt, will be completed by every employee of the Office of Chief Counsel. The employee's signature on the form 8556 acknowledges the receipt of Document 7098 and represents that the employee has been advised of his/her obligation to familiarize himself/herself with its contents and to abide by its instructions.
4. Attorneys should send the completed form 8556 to the Director, Office of Human Resources for inclusion in the employee's Official Personnel Folder (OPF). For non-attorneys, the completed form should be filed in the employee's OPF maintained in the regions.

IRM 30.4.8.6 Date document last amended: 2-3-1992.
Conflict of Interest--Financial

1. This section concerns restrictions on all Chief Counsel employees' participation in matters in which they have a financial interest.
2. Restrictions on Participating in Particular Matters (18 U.S.C. §208(a)).
 - a. All Chief Counsel employees should read 18 U.S.C. §208 (Exhibit 30.4.8.-2) and become familiar with its provisions. Subsection 208(a) prohibits an employee from personally and substantially participating in a particular matter, if he or she has a financial interest in the particular matter and if the particular matter will have a direct and predictable effect on that financial interest.
 - b. A financial interest in a particular matter exists when an employee or an entity whose financial interest is imputed to the employee has a stake in the matter's outcome. Imputed financial interests include those held by the employee's spouse, minor child, or general partner. The financial interests of entities are imputed to an employee if the employee serves as a director, trustee, general partner, or employee of the entity or if the employee is negotiating with or has an arrangement concerning future employment with the entity.
 - c. Particular matters under 18 U.S.C. §208(a) need not involve specific parties and include a broad range of Government activities such as judicial or administrative proceedings, applications, request for rulings, or other determinations, as well as general activities such as rulemaking or the formulation of general policies.
 - d. A particular matter has a direct and predictable effect on an employee's financial interest, where the employee (or an entity whose financial interest is imputed to the employee) is a member of a discrete and identifiable class of persons affected by a particular matter. For example, an employee may not work on oil depletion deduction regulations that would affect only three oil companies, if the employee owns stock in one of the three companies, because the regulations would have a direct and predictable effect on a company in which the employee, as a member of a discrete and identifiable class, has a financial interest. On the other hand, the employee could work on regulations that would affect a broad segment of the business community, even if such regulations affected a company in which the employee held stock, since a broad segment of the business community does not constitute a discrete and identifiable class.

- e. An employee who fails to comply with the restrictions imposed under 18 U.S.C. §208(a) could be subjected to fines or imprisonment. Under subsection 208(b), however, an employee may receive written permission to participate in a matter affecting a personal financial interest so that the employee will not incur the penalties provided under subsection 208(a).
3. An employee who is given an assignment in which he or she has a financial interest must notify his or her supervisor of the conflict of interest by executing Form 6782, Certification of a Direct or Indirect Financial Interest in a Work Assignment. The employee's supervisor should reassign the matter, unless the employee's financial interest is exempt from the statutory prohibition, or the employee divests the financial interest. (See Handbook for the Rules of Conduct, IRM 0735.1, text 232.22(2)).
4. An employee's financial interest is generally exempt from subsection 208(a)'s restrictions, if:
 - a. The employee's financial interest consists of an interest of any size in a widely held, diversified mutual fund, except where the employee is an officer, director, trustee, or employee of the mutual fund, the employee's spouse or dependent is an officer, director, or trustee of the mutual fund, or the matter involves the mutual fund itself, or if.
 - b. The employee's financial interest consists of corporate securities valued at \$5000 or less.
 - c. The employee holds less than 1 percent of the total outstanding units of that type of security, and
 - d. The employee is not an officer, director, trustee, or employee of the entity and the employee's spouse or dependent is not an officer, director, or trustee of the entity.

Although an employee's financial interest may be generally exempt, the employee is, nevertheless, required to report the financial interest to his or her supervisor. Where warranted, the supervisor may authorize the employee's continued participation in the particular matter.

5. Where an employee's interest is not generally exempt, the Chief Counsel may nevertheless determine that the interest is specially exempt. A special exemption is available where an employee fully discloses the conflicting financial interest and a determination is made by an authorized agency official that the interest is not so substantial as to affect the integrity of the employee's Government services (factors to be considered in making this determination are set forth in the Handbook for the Rules of Conduct, IRM 0735.1, text 232.22(5)(a)). To obtain a special exemption, the employee's supervisor should submit a memorandum and the completed Form 6782 to the Deputy Chief Counsel seeking a written determination that the employee's interest is specially exempt. In the National Office, the request should be routed through and subject to the approval of the employee's As-

sistant Chief Counsel and Associate Chief Counsel. A request for a special exemption from the field should be reviewed and approved by Regional Counsel, prior to being forwarded to the Deputy Chief Counsel. If the Deputy Chief Counsel agrees that the employee should participate in the particular matter, the Deputy Chief Counsel will take appropriate steps to secure a written determination from the Chief Counsel. The Office of Chief Counsel is required to confer with OGE prior to granting a special exemption and must supply OGE with a copy of all exemption determinations.

6. The prohibitions of section 208 are reflected in Department of Treasury Minimum Standards of Conduct, 31 C.F.R. S0.735-36, and IRS Rules of Conduct 231 and 232. Any questions concerning financial conflicts of interest should be directed to the Assistant Chief Counsel, General Legal Services, CC:F&M:GLS.

IRM 30.4.8.7 Date document last amended: 4-15-1999.
Standards of Ethical and Professional Conduct - Policy

1. The Office of Chief Counsel has always been committed to maintaining the highest standards of ethical and professional conduct. Our employees must adhere to the letter and the spirit of the Tax Court Rules of Practice and Procedure, the ABA Model Rules of Professional Conduct, the Office of Government Ethics Standards of Conduct, the Treasury Rules of Conduct, and Treasury Supplemental Standards of Conduct in handling our cases. Moreover, our legal practice and conduct should always be characterized by adherence to the highest standards of professionalism, honesty, and fair play. Allegations or evidence of employee misconduct must be investigated and acted upon in a uniform and consistent manner.
2. The organization recognizes that uniform procedures must be established which will assure consistent treatment of allegations or evidence of employee misconduct, unprofessional behavior, or the failure to follow established procedures, and which will build public and internal confidence in the processes used to investigate and evaluate such allegations or evidence of misconduct. In addition, the organization recognizes the need for clarification of which matters should be referred to the Treasury Inspector General for Tax Administration (TIGTA) and which matters should be retained and handled as management matters. Finally, the Office recognizes that inconsistent treatment of employees may result from confusion as to whether an event should be dealt with in the evaluation/feedback or disciplinary process, or whether an allegation warrants referral to higher levels of management. To address these issues, the Office is establishing the following procedures, which cover matters to be referred to the Treasury Inspector General for Tax Administration, the Deputy Chief Counsel, or local management, and the investigative procedures which may follow such referrals.



3. The procedures described below apply to all allegations or evidence of misconduct by a Counsel employee received from any source, including.
 - a. An administrative or judicial body.
 - b. A taxpayer or other member of the public.
 - c. An employee of the Internal Revenue Service or Office of Chief Counsel, or other Treasury bureau; and
 - d. An official or employee of another federal agency.

IRM 30.4.8.7.1 Date document last amended: 4-15-1999.
Matters to be Referred to the Deputy Chief Counsel for Referral to the Treasury Inspector General for Tax Administration

1. Allegations or evidence concerning the possible existence of criminal or other misconduct constituting a violation of law, rules or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety should be referred to the Deputy Chief Counsel for referral to the Treasury Inspector General for Tax Administration. See Treasury Directive No. 40-01 (Sept. 21, 1992).
2. Complaints or allegations referred by the Deputy Chief Counsel to the Treasury Inspector General for Tax Administration for investigation include allegations or evidence of potential criminal conduct occurring on the job or in connection with official duties, and all integrity issues, unless the conduct is otherwise covered by established procedures (e.g., EEO complaints, grievances, and employee tax compliance issues).
3. Examples of matters which should be referred to the Treasury Inspector General for Tax Administration include, but are not limited to, allegations of.
 - a. Misuse of office or official credentials.
 - b. Unauthorized outside employment raising conflict of interest issues; and
 - c. Unauthorized access to taxpayer information.
4. Referral Procedures.
 - a. While all employees have the right to refer matters directly to the Treasury Inspector General for Tax Administration (see (5) *infra.*), it assists in the management of Counsel offices if managers and executives are made aware of allegations of misconduct of subordinates. Accordingly, referrals should generally be made through the management chain. Management may be able to add additional information to the referral that the Treasury Inspector General for Tax Administration will find useful in determining whether to investigate the complaint.
 - b. Managers should refer all potential Treasury Inspector General for Tax Administration matters to the Deputy Chief Counsel through the management chain. If an allegation involves an individual in the chain of referral, the referral

should be made to the next higher official in the chain.

5. The foregoing referral requirement does not limit any person's right to report an allegation of misconduct directly to the Treasury Inspector General for Tax Administration for investigation.
6. Questions as to whether a matter should be referred to the Deputy Chief Counsel should be coordinated with the Claims, Labor and Personnel Law (CL&P) Branch of the Office of the Assistant Chief Counsel (General Legal Services).

IRM 30.4.8.7.2 Date document last amended: 4-15-1999.
Matters to be Referred to the Deputy Chief Counsel for Consideration

1. Matters, not described in 30.4.8.7.1, or reserved for local handling in 30.4.8.7.4, will also be referred through the appropriate management structure to the Deputy Chief Counsel.
2. Allegations or evidence of an employee's serious or significant failure to comply with the accepted standards of legal practice within the Office of Chief Counsel, including the standards of practice set forth in the CCDM, will be referred through the appropriate management chain to the Deputy Chief Counsel.
3. Serious or significant matters include actions which potentially prejudice the client's interest and which are more than an isolated, unintentional occurrence. There may be situations, however, when an isolated, unintentional matter must be referred due to the dollar impact, sensitivity or significance of the issue, or the importance of the legal standard to the efficiency or mission of the organization. It is in the client's interest to protect the taxpayer's right to fair and ethical treatment by Counsel employees, and to assure that the taxpayer's interests are not prejudiced as the result of unprofessional conduct.
4. Examples of serious or significant matters which should be referred include, but are not limited to, the following:
 - a. A nonfrivolous allegation or evidence of professional misconduct.
 - b. The failure to properly coordinate a legal position, settlement or policy matter with the appropriate party as required by the CCDM; *i.e.* ISP, a Notice case, a case involving a prior criminal matter, etc.
 - c. The failure to protect a statute of limitations.
 - d. Any alleged ethical violation; and
 - e. Repeatedly failing to meet pleading dates.
5. Managers should coordinate with the CL&P Branch of Office of the Assistant Chief Counsel (General Legal Services) as to whether a matter requires referral to the Deputy Chief Counsel. In determining whether a serious or significant matter is involved,

managers and CL&P should consider, among other factors, the following:

- a. Whether the failure to follow standard practices and procedures was willful.
 - b. The number of similar or related instances; and
 - c. The effect of the employee's actions on the functioning of the Office.
6. Upon receipt by a manager of an allegation or evidence of a matter which is referable to the Deputy Chief Counsel under the above provisions, the matter should be referred through the appropriate management chain to the Deputy Chief Counsel. If a matter involves an individual within that management structure, the referral should be made to the next higher official in the management chain.

IRM 30.4.8.7.3 Date document last amended: 4-15-1999.
Follow Up and Investigation

1. The Deputy Chief Counsel shall determine the appropriate action to be taken with respect to referrals to that office. While referral of a matter to higher levels of management serves the objective of informing management of matters of which it should be aware, the Deputy Chief Counsel may determine that a referred matter should be handled locally rather than centrally. Such matters may be returned for further investigation and handling under local procedures. See 30.4.8.7.4 below.
2. The Deputy Chief Counsel shall determine whether a referred matter warrants a centrally coordinated investigation by the Office. The Deputy Chief Counsel shall, with the assistance of the appropriate Regional or Associate Chief Counsel and the CL&P Branch of GLS, determine the composition of the investigative team. In matters in which the action in question results in actual prejudice to the client's interest, and in matters which have been returned by the Treasury Inspector General for Tax Administration for further investigation, the investigative team shall generally include individuals outside the employee's district, region, or national office division, but may include, at the discretion of the Deputy Chief Counsel, individuals from within the office or region in which the alleged misconduct occurred.
3. Upon completion of an investigation requested by the Deputy Chief Counsel, the investigative report will be transmitted to the Regional or Associate Chief Counsel, with a copy to the Deputy Chief Counsel. Management shall consult with the CL&P Branch of GLS regarding whether the matter should be dealt with through the evaluation /feedback process or through disciplinary procedures, and if the latter, as to an appropriate range of discipline.
4. The Deputy Chief Counsel is responsible for reporting to the TIGTA on the disposition of matters investigated at the request of the TIGTA.

IRM 30.4.8.7.4 Date document last amended: 4-15-1999.
Matters Which May Be Handled Under Local Procedures

1. Matters which may be handled under local procedures include evaluation and discipline matters which.
 - a. Are covered under other formal procedures within the Office of Chief Counsel, the Treasury Department, or the federal government.
 - b. Do not require referral to the Treasury Inspector General for Tax Administration (see 30.4.8.7.1).
 - c. Do not require referral to the Deputy Chief Counsel (see 30.4.8.7.2); or
 - d. Have been returned to local management by the Deputy Chief Counsel for handling under local procedures.
2. Matters returned by the Deputy Chief Counsel (including matters returned by the TIGTA), and other matters which, after consultation with CL&P, have been determined not to require referral to the Deputy Chief Counsel will be handled as directed by the Regional Counsel or Associate Chief Counsel.
3. Examples of matters which may be handled under local procedures, absent special circumstances, include, but are not limited to:
 - a. Employee tax compliance issues.
 - b. Personnel practices subject to grievance procedures.
 - c. EEO matters.
 - d. Office altercations.
 - e. Failure to follow standard office procedures.

IRM 30.4.8.7.5 Date document last amended: 4-15-1999.
Employee Rights and Obligations

1. *Union Representation.* Bargaining unit employees who are the focus of an investigation have the right to union representation in an investigation conducted by Counsel investigators. The Office of the Treasury Inspector General for Tax Administration (TIGTA) is an independent statutory Inspector General. Therefore, the Chief Counsel agreement provisions concerning the rights of bargaining unit employees to union representation do not apply to TIGTA investigations. The Courts of Appeal are not in agreement as to whether a bargaining unit employee has a statutory right to the presence of a union representative at an investigation conducted by an Inspector General. This issue is currently before the Supreme Court. Pending a Supreme Court decision, the position of the TIGTA is that its agents will follow the law of the judicial circuit having jurisdiction over the employee being interviewed. TIGTA agents will advise bargaining unit employees of their right to representation in those jurisdictions where they do have a right to union representation.



2. *Duty to Respond Truthfully.* Employees are required to respond truthfully to questions, whether oral or written, in connection with any matter of official interest. 31 C.F.R. §0.208. An employee may be subject to disciplinary action, including removal, when during the course of an investigation relating to the employee's official duties the employee does not answer truthfully concerning his own conduct or the conduct of other employees. See CCDM 30.4.8.3 for procedures involving disciplinary and adverse actions.

IRM 30.4.8.7.6 Date document last amended: 4-15-1999.
Annual Report

1. The Office will publish an annual report that will inform employees and the public about the Office's actions regarding allegations and evidence of misconduct. The manner of presentation will ensure that the privacy rights of employees are protected.

IRM 30.4.8.8 Date document last amended: 10-1-1982.
Timely Filing of Federal, State, and Local Tax Returns and Payment of Taxes Due

1. This is to remind employees of their obligations to ensure that their Federal, state, and local tax returns are filed timely and that any taxes due are timely paid.
2. Requirements.
 - a IRM 0735.1, part 223.6 Handbook of Employee Responsibilities and Conduct, sets forth the Service's rule on timely filing and payment. It states in part that employees must:
 - "(a) file timely and properly all tax returns in keeping with the requirements of law, regulation or ordinance".
 - "(b) pay timely any valid taxes due".
 - b Returns for refunds are treated no differently than those for which taxes are owed. They also must be timely filed.
 - c Employees who neglect their tax responsibilities or fail to abide by the tax laws or regulations are subject to removal from the Office.
 - d If employees cannot timely file or pay their taxes for reasons beyond their control, they should seek extensions of time.
 - e Employees should contact their local IRS office if they have questions about filing their tax returns. Supervisors will be available to counsel employees concerning the requirements of this section.

IRM 30.4.8.9 Date document last amended: 7-12-1990.
Monitoring of Conversations

1. This section states the restrictions applicable to the monitoring of telephone and nontelephone conversations and implements the government wide restrictions applicable to the monitoring of telephone conversations under 41 C.F.R. Subpart 201-6.2.

"Monitoring", as used here, means all forms of device-aided (except common hearing-aid use) over-hearing or recording of the audible aspects of conversations.

2. The monitoring of a conversation, unless with the consent of at least one party to the conversation, is prohibited.
3. Absent employee physical handicap and the determination referred to in the second bullet of paragraph (4)b, the monitoring of a conversation, without the consent of all parties, but with the consent of at least one party, is permitted only in cases involving criminal investigations. In criminal investigations, under the specific circumstances set forth in Policy Statement P-9-35 and IRM 9389, and at the specific request of and in conjunction with properly authorized investigative personnel of the Internal Revenue Service, Chief Counsel personnel may participate in the monitoring of conversations provided they have obtained the prior approval of the Regional Counsel, an Associate Chief Counsel, the Deputy Chief Counsel, or the Chief Counsel, whichever is appropriate. Approval authority may not be delegated.
4. Cases Not Involving Criminal Investigation.
 - a. Nontelephone Conversations. When all parties to a nontelephone conversation consent to transcription, a verbatim transcript may be made under the direction of Chief Counsel personnel by a stenographer or by use of ordinary dictating equipment.
 - b. Telephone Conversations.
 - Absent the consent of all parties to a telephone conversation, monitoring is prohibited except as described at subsection 2 below.
 - A handicapped employee may, without the consent of all parties to a telephone conversation, use a listening device or recording device in connection with the conversation, subject to the required agency determinations of 41 C.F.R. §201-6.202(d).
 - If all parties to a telephone conversation consent to monitoring the conversation, the conversation may be overheard and a verbatim recording or transcription may be made under the direction of Chief Counsel personnel by a stenographer or a recording device. No such consensual monitoring is permitted without the express authorization of the Chief Counsel. In order to obtain permission for such consensual monitoring, in each case Chief Counsel personnel must submit a request to the Chief Counsel through an Associate Chief Counsel, or the Regional Counsel, whichever is appropriate. Approval authority may not be delegated by Regional Counsel or Associate Chief Counsel.

IRM 30.4.8.10 Date document last amended: 7-12-1990.
Conflict of Interest--Prior Employment

1. This section states the Office policy concerning restrictions on attorneys employed by the Office who have previous knowledge of or involvement in matters including cases pending in the Office. Attorneys employed by the Office often have been previously employed. The possibility exists that attorneys might be assigned a matter with which they have had some previous involvement.
2. Policy.
 - a. Regional Counsel, Assistant Chief Counsel, and supervisors should take necessary action to make certain that attorneys under their supervision do not participate in any matter in which they have been personally or substantially involved prior to their employment with the Office.
 - b. Attorneys employed by the Office will be required to sign a statement that they will not, in any way, participate in any matter in which they had participated, personally and substantially prior to their employment with the Office.
 - c. When an attorney reports for duty in a field office, the statement will be signed by the attorney and returned to the Personnel Branch, Office of Finance and Management, with the other appointment papers. Financial Management and Personnel Branch will see that an attorney reporting to the National Office signs the statement. The signed statement will be included in the attorney's OPF.

IRM 30.4.8.11 Date document last amended: 7-12-1990.
Conflicts of Interest--Postemployment Prohibitions

1. This section concerns certain restrictions and prohibitions of attorneys and technical advisors with regard to postemployment activities. The restrictions affect any former attorney who might represent any client in any matter or proceeding.
2. Statutory Restraints and Prohibitions. The restraints of this section pertain to certain matters in which the United States is a party or has a direct and substantial interest. (See 18 U.S.C. §207.) These matters consist of those in which a former employee participated personally and substantially or merely had supervisory capacity or overall official responsibility for the matters in question.
 - a. Restrictions on Former Employees Concerning.
 - a. Restrictions on Former Employees Concerning Matters Directly Connected with Their Former Duties. (18 U.S.C. §207(a)).
 - Former government employees are permanently barred from acting as agent or attorney for, or otherwise representing any other person in an appearance before, or with the intent to influence or make any oral

or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter the employee has personally and substantially participated as a government employee.

- Such matters so barred would include all proceedings, judicial or otherwise, applications, requests for rulings or determinations, contracts, claims, controversies, investigations, charges, accusations, arrests, or other particular matters in which the former employee participated personally and substantially. Rulemaking, legislation, the formulation of general policy standards or objectives, or other action of general application is not such a matter.
 - The employee's prior personal participation may include, but is not limited to, decisions, approvals or disapprovals, recommendations, investigations, or the rendering of advice.
- b. Two Year Restriction on Former Employees in Matters Connected with Their Former Official Responsibilities. (18 U.S.C. §207(b)).
 - Former government employees are barred for a period of two years from acting as agent or attorney for, or otherwise representing any other person in any appearance before, or with the intent to influence, making any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular government matter involving a specific party, (3) if such matter was actually pending within one year prior to the termination of the employee's responsibility.
 - "Official responsibility" means the direct administrative or operating authority, intermediate or final, exercisable alone or with others, and either personally or through subordinates, to approve, disapprove or otherwise direct Government action. It does not include general rulemaking, the formulation of general policy or standards, or other similar matters.
 - "Actually pending" means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, but not that it merely could have been.
 3. Practice of Attorneys before the IRS. Included herein as Exhibit 30.4.8-3 are excerpts of Treasury Department Circular No. 230, which governs the practice of attorneys before the Service. Willful violation of these regulations may be basis for disbarment or suspension from practice before the IRS.



IRM 30.4.8.12 Date document last amended: 6-18-1996.
Filing Financial Statements under the Ethics in Government Act of 1978 [GM-15 Attorneys, See 30.4.8.13]

1. Chief Counsel officials listed herein are required to file and make public their financial statements under Title II of the Ethics in Government Act of 1978 (hereinafter referred to as Title II), Pub. L. 95-521, as amended (5 U.S.C. Appendix 201-211). This section establishes the procedures for filing, reviewing and making public the required financial statements. The Chief Counsel and the Assistant Chief Counsel, General Legal Services' financial statements are required to be filed with the Treasury Department, and are therefore not covered by the procedures provided herein.
2. IRM 0735.1, Handbook for the Rules of Conduct (hereinafter, Handbook) is made a part hereof by reference. However, §245.6(4) of the Handbook which designates the individuals through whom covered employees must file does not apply to Chief Counsel employees. The designated individual in the Office of Chief Counsel through whom the following covered employees shall file is:
 - a. Employee--Designated Individual.
 - Deputy Chief Counsel--Assistant Chief Counsel, GLS Division.
 - Regional Counsel--Deputy Chief Counsel Associates Chief Counsel Special Assistant to the Chief Counsel.
 - SES officials on immediate staff of Associates Chief Counsel--Appropriate Associate Chief Counsel.
 - Assistant Chief Counsel--Appropriate Associate Chief Counsel.
 - Regional employees, in SES positions--Appropriate Regional Counsel.
3. The Designated Agency Official for filing and review purposes under Title II for both Service and Chief Counsel officials is the Chief Counsel. The Assistant Chief Counsel, GLS, has been delegated the authority, under the supervision of the Deputy Chief Counsel, to act for the Chief Counsel under CCDM (30)312.36:(2)(d).
4. Affected Chief Counsel officials will file their Financial Disclosure Statements with the designated individual identified above in accordance with the procedures of §245.6 of the Handbook. The designated individual will forward these statements to the Assistant Chief Counsel, GLS, as specified in that section.
5. The Chief, Office of Executive Support of the Service shall maintain a file of the statements filed by Chief Counsel officials. All such statements will be available for public inspection and copies may be furnished upon payment of a reasonable fee.
6. The Chief, Staffing Section, Personnel Branch shall furnish the Assistant Chief Counsel, GLS, the

name and post of duty of each Chief Counsel official required to file a Statement under Title II.

IRM 30.4.8.13 Date document last amended: 4-22-1992.
Statement of Employment and Financial Interests [See 30.4.8.12]

1. This section applies to all attorneys and Tax Law Specialists at grade GS/M-15 classified under 5 U.S.C. 5332 who are not required to file a Financial Disclosure Statement under Title II of the Ethics in Government Act of 1978, Pub. L. 95-521 as amended. Financial statements of all attorneys and Tax Law Specialists at grades GS/M-15 and above are required by section 201 of Executive Order 12674, April 12, 1989. See the regulations of the Office of Personnel Management at 5 C.F.R. Part 735 and Subpart C of the Treasury Minimum Standards of Conduct. However, Title II of the Ethics in Government Act of 1978 includes a provision to the effect that officials required to file a Financial Disclosure Statement under that title are not required to file such statements under any other law or regulation required for purposes of preventing conflicts of interest or apparent conflicts of interest. Therefore, officials required to file Financial Disclosure Statements under Title II of the Ethics in Government Act of 1978 and CCDM 30.4.8.12, are not required to file under this section.
2. All attorneys and Tax Law Specialists in grade GS/M-15 not covered by Title II are required to file a confidential Statement of Employment and Financial Interests, Form TDF 62-93.6 (available from local supply sources), in accordance with IRM 0735.1, no later than July 31 of each year, containing information as of June 30. Newly appointed attorneys and Tax Law Specialists to a position in grade GS/M-15 will file an initial statement not later than 30 days after the effective date of their appointment.
3. Review.
 - a. All GS/M-15 National Office attorneys and Tax Law Specialists will file their financial statements with their Assistant Chief Counsel who will review them and send them to the appropriate Associate Chief Counsel. Assistant Chief Counsel are responsible for keeping the retained copies in a locked file or safe.
 - b. Regional GS/M-15 attorneys will file their statements (through their District Counsel) with the Regional Counsel who will review the statements and send them to the Deputy Chief Counsel. Regional Counsel are responsible for keeping the retained copies in a locked file or safe.
 - c. The Assistant Chief Counsel and Regional Counsel will forward the originals of each statement to the Deputy/Associate Chief Counsel, no later than August 15 of each year.
 - d. The Deputy/Associates Chief Counsel, after appropriate review, will forward the originals of each statement forwarded to them by the Re-

gional Counsel and Assistant Chief Counsel to the Director, Office of Human Resources, who will forward the statements in accordance with section 0.735-99(b) of the Treasury Minimum Standards of Conduct to the Deputy General Counsel.

- e. All Statements should be clearly marked "TO BE OPENED BY ADDRESSEE ONLY" when they are transmitted via mail or messenger service.
4. The retained copies, as well as the forwarded copies, must be protected against improper disclosure in accordance with Treasury Minimum Standards of Conduct, §0.735-100. To guard against improper disclosure during the review process, reviewers should take the necessary steps to see that the statements filed with them are kept where they cannot be seen by a casual bystander. Except in unusual circumstances, the only persons who should see the statements, other than the reviewer, are the reviewer's immediate superior and, where necessary, the reviewer's personal secretary.
5. Each of the foregoing supervisors are responsible for advising all employees under their supervision as to the standards of conduct applicable to them. If information from the statements submitted or from other sources indicates a conflict of interest, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. Any questions or requests for advice in resolving a conflict or apparent conflict shall be referred to the Assistant Chief Counsel, General Legal Services.
6. The Director, Office of Human Resources shall furnish a statistical report to the Assistant Chief Counsel, General Legal Services for each week beginning August 1 until the review process is complete. The report shall contain the number of statements required, the number received, and the results of the reviews (such as the number approved and those awaiting final resolution).

IRM 30.4.8.14 Date document last amended: 7-12-1990.
Attorneys and Technical Advisors Negotiating or Making Arrangements for Employment Outside the Office of Chief Counsel

1. Employees often negotiate or make arrangements concerning prospective employment while employed in the Office. A conflict of interest, either actual or apparent, may arise during the course of making arrangements or negotiating with a prospective employer, since in some instances the prospective employer may have an interest in cases or matters pending before the Office, either as the taxpayer or the representative. Inadvertent violations by employees may occur, of the provisions of 31 C.F.R. S0.735-1 et seq., and IRM 0735.1. From the standpoint of all employees as well as the Office, any appearance of impropriety must be avoided. For purposes of this section, "interest" as used below includes the interest (financial and otherwise) of the taxpayer (or a related

taxpayer) as well as the financial interest of a representative who is being compensated for services in the case.

2. Requirements.

- a. It is the responsibility of each employee to avoid actual and apparent conflicts of interest. Employees must refrain from negotiating or making arrangements for employment with any person who has an interest in a case or matter being handled or supervised by the employee.
- b. Before commencing any negotiations with an outside employer, employees should review their cases to determine whether any prospective employer is the taxpayer or related taxpayer or is serving as such taxpayer's representative. If a prospective employer is any of the above, the employee should postpone negotiations until a reasonable time after his or her participation in the case has ceased, except when the case is reassigned after discussion with the appropriate supervisor.
- c. It is not clear that merely sending resumes constitutes "negotiation" under 18 U.S.C. §208 (Exhibit 30.4.8-3). The sending of a resume, however, to the particular taxpayer's representative handling a case with the employee of the Office does create the appearance of impropriety. An appearance of impropriety may also be created, depending on the circumstances, when a resume is sent to any member of a firm that is handling a case with an employee of the Office. For these reasons, it may be advisable for attorneys to notify their supervisors prior to forwarding resumes to prospective employers, and to discuss the need for reassignment, in order to avoid any potential problems under 18 U.S.C. §208. Under no circumstances will the fact that an employee is seeking employment outside the government, in itself, jeopardize the employee's promotion potential or opportunities for work assignments. Additional guidance concerning employment negotiating situations may be found at 31 C.F.R. S0.735-36(c).
- d. Supervisory and managerial attorneys negotiating or making arrangements concerning prospective employment should also take into account cases or matters assigned to attorneys under their supervision in which the prospective employer has an interest. Voluntary disqualification by the supervisor pending the results of negotiations as to a case or matter may be necessary or advisable. Next higher level supervisors should be notified of such disqualification.
- e. Assistance may be found by referring to the Department of the Treasury Minimum Standards of Conduct, 31 C.F.R. S0.735-1 et seq. and IRM 0735.1, Handbook of Employee Responsibilities and Conduct.



- f. In the discretion of the Chief Counsel, Regional Counsel, District Counsel or Assistant Chief Counsel, the employee may be reassigned to a case, or resume supervision over a case, if and when all employment negotiations with a particular prospective employer are terminated without an offer of employment which is accepted.
3. Any questions concerning this section should be directed to the Assistant Chief Counsel, General Legal Services.

2. REINO UNIDO

A. SEVEN PRINCIPLES ON PUBLIC LIFE (1995)

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life.

The Committee has set them out here for the benefit of all who serve the public in any way.



B. CAPITULO IV DEL CIVIL SERVICE MANAGEMENT CODE (1993)

INTRODUCTION

CHAPTER 1 TAKING UP APPOINTMENT

Section 1.1 Recruitment

Annex A: Civil Service Nationality Rules

Section 1.2 Working Arrangements

Section 1.3 Probation

Section 1.4 Letters of Appointment and Information on Pensions

Section 1.5 Fast Stream Development Programme

Section 1.6 Appointment and Management of Specialists

Section 1.7 Re-appointment: Reinstatement and Re-employment

CHAPTER 2 EQUAL OPPORTUNITIES IN THE CIVIL SERVICE

Section 2.1 Policy

CHAPTER 3 HEALTH AND SAFETY AT WORK

Section 3.1 Health and Safety

CHAPTER 4 CONDUCT AND DISCIPLINE

Section 4.1 Conduct: General Principles and Rules

Annex A Civil Service Code

Section 4.2 Conduct: Confidentiality and Official Information

Section 4.3 Conduct: Standards of Propriety

Annex A: Rules on the Acceptance of Outside Appointments by Crown Servants

Annex B: Guidance for Departments and Agencies on the Rules on the Acceptance of Outside Appointments by Crown Servants

Section 4.4 Conduct: Political Activities

Annex A: Guidelines and Principles on Participation in Political Activities

Section 4.5 Discipline: Rules and Code of Practice

Annex A: Recovery of Losses to Public Funds

CHAPTER 5 THE SENIOR CIVIL SERVICE

Section 5.1 General

Section 5.2 The SASC Group

Section 5.3 Senior Civil Service Terms and Conditions

CHAPTER 6 MANAGEMENT AND DEVELOPMENT

Section 6.1 Grading and Classification of Staff

Section 6.2 Personal Review

Section 6.3 Poor Performance: Inefficiency and Limited Efficiency

Section 6.4 Promotion and Lateral Transfers

CHAPTER 7 PAY AND ALLOWANCES

Section 7.1 Remuneration of Staff

Annex A: Senior Civil Service Pay Framework

Annex B: Allowances for Members of the Senior Civil Service

Section 7.2 Advances of Pay

- Section 7.3 Voluntary Deductions from Pay
- Section 7.4 Rent for Government-Owned Properties

CHAPTER 8 EXPENSES

- Section 8.1 Reimbursement of Expenses
- Section 8.2 Travel
- Section 8.3 Relocation
- Section 8.4 Compensation for Loss or Damage to Personal Property
- Section 8.5 Concessionary Arrangements for Staff Working in Northern Ireland
- Section 8.6 Overseas Expenses

CHAPTER 9 HOURS, HOLIDAYS AND ATTENDANCE

- Section 9.1 Hours of Work
- Section 9.2 Holidays and Attendance
- Section 9.3 Maternity Arrangements
- Section 9.4 Attendance during National Emergencies
- Section 9.5 Sick Absence
- Section 9.6 Injury, Disease or Assault at Work.

CHAPTER 10 STAFF MOVEMENT AND REDEPLOYMENT

- Section 10.1 Mobility
- Section 10.2 Transfer of Staff between Departments and Agencies
- Section 10.3 Secondment
- Section 10.4 Service with the European Institutions

CHAPTER 11 LEAVING THE CIVIL SERVICE

- Section 11.1 Notice and References
- Section 11.2 Action Before Leaving the Civil Service
- Section 11.3 Normal Retirement Age
- Section 11.4 Dismissal for Inefficiency
- Section 11.5 Early Retirement or Severance
- Section 11.6 Compulsory Early Retirement or Severance
- Section 11.7 Flexible Early Retirement or Severance
- Section 11.8 Approved Early Retirement
- Section 11.9 Actuarially Reduced Retirement
- Section 11.10 Medical Retirement

CHAPTER 12 APPEALS AND LEGAL REPRESENTATION AT PUBLIC EXPENSE

- Section 12.1 Appeals
- Section 12.2 Legal Representation at Public Expense

INTRODUCTION

1. This Code is issued under the authority of the Civil Service Order in Council 1995 (<http://www.civilservicecommissioners.gov.uk>) under which the Minister for the Civil Service has the power to make regulations and give instructions for the management of the Home Civil Service, including the power to prescribe the conditions of service of civil servants.

2. This Code, on which the recognised trade unions have been consulted, sets out regulations and instructions to departments and agencies regarding the terms and conditions of service of civil servants and the delegations which have been made by the Minister for the Civil Service under the Civil Service (Management Functions) Act 1992 to Ministers and office holders in charge of departments, the First Minister in the Scottish Executive and the National Assembly for Wales, together with conditions attaching to those delegations. For convenience, the term “departments and agencies” has been used in the context of delegation throughout the Code. It includes the Scottish Administration and the National Assembly for Wales. Where departments and agencies are given discretion to determine terms and conditions, the Code sets out the rules and principles which must be adhered to in the exercise of those discretions. It does not of itself set out terms and conditions of service. In the case of agencies, the presumption is that functions delegated to Ministers and office holders will (in respect of agencies), be exercised by Agency Chief Executives, but the precise extent to which Ministers and office holders may wish to allow the exercise of their powers by Chief Executives is a matter for them to determine.

3. Ministers and office holders in charge of departments, the First Minister of the Scottish Executive and the National Assembly for Wales have been given the authority:

- a. To prescribe the qualifications (so far as they relate to age, knowledge, ability, professional attainment, aptitude and potential, health and coping with the demands of the job) for the appointment of home civil servants (with the exception of the Fast Stream Development Programme) in their respective departments; and
- b. To determine the number and grading of posts outside the Senior Civil Service in their respective departments and the terms and conditions of employment of Home civil servants in so far as they relate to the following:
 - i. Classification of staff, with the exception of the Senior Civil Service.
 - ii. Remuneration, with the exception of the Senior Civil Service.
 - iii. Allowances.
 - iv. Expenses.
 - v. Holidays, hours of work and attendance.
 - vi. Part-time and other working arrangements.
 - vii. Performance and promotion.
 - viii. Retirement age, with the exception of the Senior Civil Service.
 - ix. Redundancy.
 - x. Re-deployment and lateral transfer of staff within the Home Civil Service.

4. This delegation (which revokes all previous delegations) is made subject to the condition that recipients of delegation comply with the provisions of this Code as amended from time to time. However, it does not remove the obligation on departments and agencies to submit to the Cabinet Office proposals or arrangements which are contentious, or raise questions of propriety. Departments and agencies are reminded that the Government is committed to maintaining the reputation of the Civil Service as a good employer. The terms and conditions of civil servants must be determined with regard to: the general practice of large employers; value for money; and the provisions of “Government Accounting”.

5. Departments and agencies must comply fully with legislation which binds the Crown or which Ministers¹ have undertaken to apply as if it were binding on the Crown. They must define clearly the terms and conditions of service of their staff and make these available to staff, for example in departmental or agency handbooks. Where departments and agencies have delegated powers or discretion, they must make clear to their staff how these will be applied by setting out the relevant rules and procedures in their handbooks.

6. *When exercising the delegated powers permitted by this Code, departments and agencies should remember that existing rights cannot be altered arbitrarily.* They must observe any legal constraints upon them as employers, consulting as necessary with their staff and the recognised trade unions. Any questions of possible detriment occasioned by the application of their delegated powers should be resolved locally. If uncertainty over entitlement is an issue, managers should consult their legal advisers and, if necessary, the Cabinet Office.

7. The Cabinet Office retains the right to inspect and monitor observance of this Code in departments and agencies, but the aim is to keep such inspection and monitoring to the minimum level consistent with central responsibilities.

8. Subsequent changes to the central regulations and instructions (including any future delegations) will be issued as amendments to this Code, and will need to be reflected promptly in departments' or agencies' regulations for their own staff. In all cases, the Cabinet Office will make clear the effective date of any change affecting staff Service-wide.

¹The reference to Ministers used throughout the code include Scottish Ministers and the First Secretary and Assembly Secretaries of the National Assembly for Wales.

© Brief extracts (i.e. no more than ten per cent of the text) may be copied for in-house use only. Copies of longer extracts or for external use require the prior written permission of HMSO.

CHAPTER 4 CONDUCT AND DISCIPLINE

4. CONDUCT AND DISCIPLINE

4.1 CONDUCT: GENERAL PRINCIPLES AND RULES

4.1.1 Civil servants are servants of the Crown and owe a duty of loyal service to the Crown as their employer. Since constitutionally the Crown acts on the advice of Ministers who are answerable for their departments and agencies in Parliament, that duty is, subject to the provisions of the Civil Service Code at Annex A, owed to the duly constituted Government.

Authority

4.1.2 The Minister for the Civil Service is responsible for the central framework, outlined in Sections 4.2 to 4.4, which governs the conduct of civil servants. Departments and agencies are responsible for defining the standards of conduct they require of their staff and for ensuring that these fully reflect the Civil Service Code and central framework.

Principles

4.1.3 The central framework derives from the need for civil servants to be, and to be seen to be, honest and impartial in the exercise of their duties. They must not allow their judgement or integrity to be compromised in fact or by reasonable implication. In particular:

- a. Civil servants must not misuse information which they acquire in the course of their official duties, nor without authority disclose official information which has been communicated in confidence within Government, or received in confidence from others. They must not seek to frustrate the policies, decisions or actions of Government either by declining to take, or abstaining from, action which flows from ministerial decisions or by unauthorised, improper or premature disclosure outside the Government of any information to which they have had access as civil servants.
- b. Civil servants must not take part in any political or public activity which compromises, or might be seen to compromise, their impartial service to the Government of the day or any future Government.
- c. Civil servants must not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. Conflicts of interest may arise from financial interests and more broadly from official dealings with, or decisions in respect of, individuals who share a civil servant's private interests (for example freemasonry, membership of societies, clubs and other organisations, and family). Where a conflict of interest arises, civil servants must declare their interest to senior management so that senior management can determine how best to proceed; and
- d. Civil servants must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity.

4.1.4 Neither the Civil Service Code nor this central framework is comprehensive. It does not deal for example with such issues as isolated neglect of duty, failure to obey a reasonable instruction or other forms of misconduct which may properly be dealt with under disciplinary arrangements.

Rules

4.1.5 Departments and agencies must incorporate in the conditions of service of their staff the Civil Service Code at Annex A.



4.1.6 Departments and agencies must define the standards of conduct they require of their staff.

They must:

- a. Make clear to staff their duties and obligations and the penalties they may incur if they fall short of them;
- b. Comply with the rules in Sections 4.2 to 4.4; and
- c. Ensure that the rules they lay down for their staff fully reflect the Civil Service Code and the standards of conduct described in Sections 4.2 to 4.4, and incorporate any additional rules necessary to reflect local needs and circumstances.

4.1 ANNEX A: THE CIVIL SERVICE CODE

1. The constitutional and practical role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales¹⁶⁵ constituted in accordance with the Scotland and Government of Wales Acts 1998, whatever their political complexion, in formulating their policies, carrying out decisions and in administering public services for which they are responsible.

2. Civil servants are servants of the Crown. Constitutionally, all the Administrations form part of the Crown and, subject to the provisions of this Code, civil servants owe their loyalty to the Administrations¹ in which they serve.

3. This Code should be seen in the context of the duties and responsibilities set out for UK Ministers in the Ministerial Code, or in equivalent documents drawn up for Ministers of the Scottish Executive or for the National Assembly for Wales, which include:

- Accountability to Parliament¹⁶⁶ or, for Assembly Secretaries, to the National Assembly.
- The duty to give Parliament or the Assembly and the public as full information as possible about their policies, decisions and actions, and not to deceive or knowingly mislead them.
- The duty not to use public resources for party political purposes, to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code.
- The duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching decisions; and
- The duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; together with the duty to familiarise themselves with the contents of this Code.

4. Civil servants should serve their Administration in accordance with the principles set out in this Code and recognising:

- The accountability of civil servants to the Minister¹⁶⁷ or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office holder in charge of their department.
- The duty of all public officers to discharge public functions reasonably and according to the law.
- The duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and
- Ethical standards governing particular professions.

5. Civil servants should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to the Minister or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office holder in charge of their department, without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Ministers, Parliament, the National Assembly or the public.

6. Civil servants should endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration.

¹⁶⁵ In the rest of this Code, we use the term Administration to mean Her Majesty's Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales as appropriate.

¹⁶⁶ In the rest of this Code, the term Parliament should be read, as appropriate, to include the Parliament of the United Kingdom and the Scottish Parliament.

¹⁶⁷ In the rest of this Code, Ministers encompasses members of Her Majesty's Government or of the Scottish Executive.

7. Civil servants should endeavour to ensure the proper, effective and efficient use of public money.

8. Civil servants should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.

9. Civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers or Assembly Secretaries and the National Assembly as a body, and to be able to establish the same relationship with those whom they may be required to serve in some future Administration. They should comply with restrictions on their political activities. The conduct of civil servants should be such that Ministers, Assembly Secretaries and the National Assembly as a body, and potential future holders of these positions can be sure that confidence can be freely given, and that the Civil Service will conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the lawful policies of the duly constituted Administrations.

10. Civil servants should not without authority disclose official information which has been communicated in confidence within the Administration, or received in confidence from others. Nothing in the Code should be taken as overriding existing statutory or common law obligations to keep confidential, or to disclose, certain information. They should not seek to frustrate or influence the policies, decisions or actions of Ministers, Assembly Secretaries or the National Assembly as a body by the unauthorised, improper or premature disclosure outside the Administration of any information to which they have had access as civil servants.

11. Where a civil servant believes he or she is being required to act in a way which:

- Is illegal, improper, or unethical.
- Is in breach of constitutional convention or a professional code.
- May involve possible maladministration; or
- Is otherwise inconsistent with this Code; he or she should report the matter in accordance with procedures laid down in the appropriate guidance or rules of conduct for their department or Administration. A civil servant should also report to the appropriate authorities evidence of criminal or unlawful activity by others and may also report in accordance with the relevant procedures if he or she becomes aware of other breaches of this Code or is required to act in a way which, for him or her, raises a fundamental issue of conscience.

12. Where a civil servant has reported a matter covered in paragraph 11 in accordance with the relevant procedures and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to the Civil Service Commissioners, 35 Great Smith Street, London SW1P 3BQ.

13. Civil servants should not seek to frustrate the policies, decisions or actions of the Administrations by declining to take, or abstaining from, action which flows from decisions by Ministers, Assembly Secretaries or the National Assembly as a body. Where a matter cannot be resolved by the procedures set out in paragraphs 11 and 12 above, on a basis which the civil servant concerned is able to accept, he or she should either carry out his or her instructions, or resign from the Civil Service. Civil servants should continue to observe their duties of confidentiality after they have left Crown employment.

4.2 CONDUCT: CONFIDENTIALITY AND OFFICIAL INFORMATION

4.2.1 Departments and agencies must remind staff on appointment, retirement or resignation that they are bound by the provisions of the criminal law, including the Official Secrets Acts, which protect certain categories of official information, and by their duty of confidentiality owed to the Crown as their former employer.

Standards of conduct to be reflected in local staff regulations

4.2.2 Civil servants are expected to be prepared to make available official information which is not held in confidence within Government, in accordance with Government policy and departmental or agency instructions. They must not, without relevant authorisation, disclose official information which has been communicated in confidence within Government or received in confidence from others. Government policy in this area is available via the website of the Department for Constitutional Affairs at <http://www.foi.gov.uk/index.htm>.

4.2.3 Civil servants must continue to observe this duty of confidentiality after they have left Crown employment.

4.2.4 Civil servants must not take part in any activities or make any public statement which might involve the disclosure of official information or draw upon experience gained in their official capacity without the prior approval of their department or agency. They must clear in advance material for publication, broadcasts or other public discussion which draws on official information or experience.



4.2.5 Civil servants must not publish or broadcast personal memoirs reflecting their experience in Government, or enter into commitments to do so, whilst in Crown employment. The permission of the Head of their Department and the Head of the Home Civil Service must be sought before entering into commitments to publish such memoirs after leaving the service.

4.2.6 Civil servants must not seek to frustrate the policies or decisions of Ministers by the use or disclosure outside the Government of any information to which they have had access as civil servants.

4.2.7 In discharging their duties under paragraphs 5 and 9 of the Civil Service Code (Section 4.1 Annex A), civil servants must maintain the long-standing conventions that new Administrations do not normally have access to papers of a previous Administration of a different political complexion. The conventions cover, in particular, Ministers' own deliberations and the advice given to them by officials, other than written advice from the Law Officers and those papers which were published or put in the public domain by the predecessor Administration. In applying the conventions to the devolved Administrations in Scotland and Wales, any information contained in the administrative and departmental records belonging to a Minister of the Crown or a UK Government department should be treated as if it were contained in papers of a previous Administration of a different political complexion.

4.2.8 Civil servants must not take part in their official capacities in surveys or research projects, even unattributably, if they deal with attitudes or opinions on political matters or matters of policy.

4.2.9 Civil servants who are elected national, departmental or branch representatives or officers of a recognised trade union need not seek permission before publicising union views on an official matter which, because it directly affects the conditions of service of members of the union as employees, is of legitimate concern to their members, unless their official duties are directly concerned with the matter in question. In all other circumstances they must conform to the standards set out above.

Leaked Select Committee Reports

4.2.10 Civil Servants in receipt of a leaked Select Committee report must not make any use of it nor circulate it further. They must return the report without delay to the Clerk of the relevant Committee, and only then may they inform their Ministers or Assembly Secretaries. Leaked reports from Committees of the devolved legislatures must be handled in the same way.

Crown copyright

4.2.11 By virtue of the Copyright, Designs and Patents Act 1988, works made by civil servants in the course of their official duties are subject to Crown copyright protection. The responsibility for the management and licensing of Crown copyright rests with the Controller of Her Majesty's Stationery Office (HMSO) in her capacity as Queen's Printer for works produced by UK Government departments, Northern Ireland departments and the National Assembly for Wales. For works produced by the Scottish Administration, the responsibility for management and licensing rests with the Queen's Printer for Scotland in accordance with the Scotland Act 1998. The Controller of HMSO, in her roles as Queen's Printer, and the Queen's Printer for Scotland, authorises the Copyright Unit of HMSO to administer the respective Crown copyrights on her behalf.

4.2.12 Civil servants must obtain the prior approval of their Head of Department or Agency Chief Executive before entering into any arrangements regarding the publication or dissemination of any Crown copyright protected material by private sector publishers or information providers. Such arrangements would usually be the subject of specific licensing, to be handled by HMSO's Copyright Unit. This would not apply in the following circumstances:

- a. Where material is to be published in learned journals or in the proceedings of conferences or seminars.
- b. Where the material in question is to be published in an official, authorised work specifically on behalf of the originating department or agency; or
- c. Where the department or agency is authorised to license the material under specific delegated authority issued by the Controller of HMSO or the Queen's Printer for Scotland.

4.2.13 Where departments and agencies are authorised to license the reproduction of Crown copyright protected material which they originate, under the cases specified in paragraph 4.2.11 above, they must ensure that:

- a. There is an obligation placed on the publisher to acknowledge the Crown copyright source material.
- b. Crown copyright is not assigned to the publisher; and
- c. That the material is licensed on non-exclusive terms.

4.2.14 Crown copyright is not an issue if a civil servant produces a copyright work unconnected with their official duties and entirely in their own time. If, however, the work in question is linked to their official

duties, they should in the first instance consult their Director of Personnel or the Head of their Department or Agency, who in turn may need to consult HMSO's Copyright Unit. Under these circumstances, the following factors need to be taken into account:

- a. Whether the civil servant produced the work during official time.
- b. Whether the work is based on existing Crown copyright source documents; and
- c. Whether there are security considerations.

4.2.15 If a civil servant writes a book in their own time, which is unrelated to their official duties, but wishes to incorporate extracts of Crown copyright protected material within the work, permission to reproduce the material should be obtained from HMSO's Copyright Unit. It is customary in such cases for the licence to be granted in favour of the publisher rather than the author, as it is the publisher which is reproducing the material. It is permissible for the author to submit the application on the publisher's behalf. Where an individual is on secondment outside the Civil Service, copyright in any work which they produce during the term of their secondment will rest with their host organisation unless otherwise agreed.

4.2.16 A series of Guidance Notes on various aspects relating to copyright and official publishing can be obtained from the HMSO, Cabinet Office, or via their Website at <http://www.hmso.gov.uk/guides.htm>.

4.3 CONDUCT: STANDARDS OF PROPRIETY

Rules

4.3.1 Departments and agencies must not, unless the civil servant has fully disclosed the measure of his/her interest in the contract and senior management has given permission, let contracts to:

- a. Any civil servant in the department or agency.
- b. Any partnership of which a civil servant in the department or agency is a member; or
- c. Any company where a civil servant in the department or agency is a director (except as a nominee of the department or agency).

To enforce this rule, departments and agencies must require their staff to report relevant business interests.

4.3.2 Departments and agencies must ensure that civil servants who are bankrupt or insolvent are not employed on duties which might permit the misappropriation of public funds.

4.3.3 Departments and agencies must not sell surplus Government property to civil servants who have been able to get special knowledge about the condition of the goods because of their official duties; or have been officially associated with the disposal arrangements; or at a discount that would not be available to a member of the public.

4.3.4 Departments and agencies must require staff to seek permission before accepting any outside employment which might affect their work either directly or indirectly and must make appropriate arrangements, which reflect the Business Appointments Rules (Annex A) and any local needs, for the handling of such requests.

4.3.5 Departments and agencies must inform staff, taking into account the principle in paragraph 4.1.3(d), of the circumstances in which they need to report offers of gifts, hospitality, awards, decorations and other benefits and of the circumstances in which they need to seek permission before accepting them. In drawing up such rules departments and agencies must draw the attention of staff to the provisions of the Prevention of Corruption Acts 1906 and 1916.

4.3.6 Departments and agencies must consult the Foreign and Commonwealth Office if a civil servant is offered a decoration or medal by a foreign government.

Standards of conduct to be reflected in staff handbooks

4.3.7 Civil servants must familiarise themselves with, and as appropriate abide by, the rules on the acceptance of outside appointments by Crown servants (Annex A).

4.3.8 Civil servants may freely invest in shareholdings and other securities unless the nature of their work is such as to require constraints on this. They must not be involved in taking any decision which could affect the value of their private investments, or the value of those on which they give advice to others; or use information acquired in the course of their work to advance their private financial interests or those of others¹⁶⁸.

¹⁶⁸ This is not intended to prevent civil servants from taking an equity stake in companies which exploit their research, subject to appropriate safeguards in accordance with the Cabinet Office guidance on this subject (Personnel Information Note (PIN) 43 (<http://www.civilservice.gov.uk/pins>)).



4.3.9 Civil servants must therefore declare to their department or agency any business interests (including directorships) or holdings of shares or other securities which they or members of their immediate family (spouse, including partner where relevant, and children) hold, to the extent which they are aware of them, which they would be able to further as a result of their official position. They must comply with any subsequent instructions from their department or agency regarding the retention, disposal or management of such interests.

4.3.10 Civil servants who become bankrupt or insolvent must report the fact to their department or agency. Civil servants must let their department or agency know if they are arrested and refused bail, or if they are convicted of any criminal offence. This does not apply to a traffic offence unless an official car was involved, or the penalty included imprisonment or disqualification from driving.

4.3 ANNEX A: RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

Introduction

1. It is in the public interest that people with experience of public administration should be able to move into business or other bodies, and that such movement should not be frustrated by unjustified public concern over a particular appointment. It is equally important that when a former Crown servant takes up an outside appointment there should be no cause for any suspicion of impropriety.

2. The Business Appointment Rules provide for the scrutiny of appointments which former Crown servants propose to take up in the first two years after they leave the service. To provide an independent element in the process of scrutiny, the Advisory Committee on Business Appointments is appointed by the Prime Minister, comprising people with experience of the relationships between the Civil Service and the private sector. The Committee gives advice on applications at the most senior levels, and reviews a wider sample in order to ensure consistency and effectiveness.

3. The aim of the rules is to maintain public trust in the Crown services and in the people who work in them, and in particular:

- a. To avoid any suspicion that the advice and decisions of a serving officer might be influenced by the hope or expectation of future employment with a particular firm or organisation; or
- b. To avoid the risk that a particular firm might gain an improper advantage over its competitors by employing someone who, in the course of their official duties, has had access to technical or other information which those competitors might legitimately regard as their own trade secrets or to information relating to proposed developments in Government policy which may affect that firm or its competitors.

4. Most applications submitted under the rules are approved without condition. In some cases approval may be given subject to a waiting period or other conditions. The imposition of conditions does not imply anything improper in a Crown servant's relationship with the prospective employer. Rather, it is an indication that an immediate move from Crown service to the employer, or one without conditions, might be open to criticism or misinterpretation. Experience has shown that employers generally are content to accept such constraints as being reasonable in an open society which places a high premium on the integrity and impartiality of its civil and military services.

5. This version of the rules applies to the Home Civil Service. There are corresponding requirements for other Crown servants including the Armed Forces, the Diplomatic Service, and certain office holders. There are different requirements and different procedures for staff at different levels.

Who must apply?

6. Within two years of leaving Crown employment, and in the circumstances set out in the following paragraph, civil servants must obtain Government approval before taking any form of full, part-time or fee-paid employment:

- a. In the United Kingdom; or
- b. Overseas in a public or private company or in the service of a foreign government or its agencies.

7. Applications for approval must be made by civil servants:

- If they are in the Senior Civil Service in salary band 4 or above and in a post attracting a minimum JESP score of 13; or if they are specialists or Special Advisers of equivalent standing; or
- If they have had any official dealings with their prospective employer during the last two years of Crown employment; or
- If they have had official dealings of a continued or repeated nature with their prospective employer at any time during their period of Crown employment; or

- If they have had access to commercially sensitive information of competitors of their prospective employer in the course of their official duties; or
 - If their official duties during the last two years of Crown employment have involved advice or decisions benefitting their prospective employer, for which the offer of employment could be interpreted as reward, or have involved developing policy, knowledge of which might be of benefit to the prospective employer; or
 - If they are to be employed on a consultancy basis (either for a firm of consultants or as an independent or self-employed consultant) and they have had any dealings of a commercial nature with outside bodies or organisations in their last two years of Crown employment.
8. The rules do not apply to:
- a. Unpaid appointments in non-commercial organisations.
 - b. Appointments in the gift of Ministers; or
 - c. in the case of part-time staff, appointments held with their department's or agency's agreement while they were civil servants.
9. Approval is required for:
- a. The initial appointment; and
 - b. Any further appointment within two years of leaving Crown employment.
10. Staff on secondment from the Civil Service to other organisations are subject to the rules in the same way as other civil servants.
11. Staff on secondment to the Civil Service from other organisations are also subject to the rules in the same way as civil servants unless they return to their seconding organisation at the end of their secondment and remain there for two years.
12. Special Advisers are subject to the rules in the same way as other civil servants unless they are offered a post by the same employer which they left on being appointed as advisers and remain there for two years. The rules do not apply to Special Advisers appointed before 1 April 1996 on terms exempting them from the rules, unless they have volunteered to be subject to them.

Reporting offers of employment

13. Departments and agencies must require staff considering any approach from an outside employer offering employment for which approval would be required under the rules (or which seems likely to lead to such an offer) to report the approach as follows:
- Heads of Department: inform the Minister in charge of the Department;
 - Other members of the Senior Civil Service (or their equivalents): inform the Head of the Department or his or her deputy as appropriate;
 - Other staff: inform a senior member of staff in the reporting chain.
14. Staff in sections concerned with procurement or contract work should report any such approach, particularly where it emanates from an outside employer with whom they or their staff have had official dealings, *whether or not* they are considering taking it up.

Applications

15. Departments and agencies must ensure that application forms are completed for all requests for approval for appointments under the rules. For this purpose:
- a. The applicant must be asked to supply:
 - Full details of the proposed employment.
 - Details of any official dealings with a prospective employer or with any other organisation, including any competitors of the prospective employer; and
 - b. Departments must ensure that they seek the comments of a countersigning officer who can verify, as far as possible, the information supplied by the applicant.

Departments are strongly recommended to adopt the Cabinet Office model form for applicants.

Terms of approval

16. Applications under these rules will be approved either:
- a. Unconditionally; or



- b. subject to conditions which may apply for up to two years from the final day in Crown employment, or where different, the final day in post, as appropriate. Conditions may include:
- A waiting period before taking up the appointment¹⁶⁹.
 - An absolute or qualified ban on the involvement of the applicant in dealings between the prospective employer and the Government.
 - A ban on the involvement by the applicant in dealings between the prospective employer and a named competitor (or competitors) of that employer.
 - In the case of consultancies, a requirement to seek official approval before accepting commissions of a particular nature, or from named employers.

17. In view of their access to policy issues at the highest levels, all applications from Permanent Secretaries, including second Permanent Secretaries, and their direct equivalents which are referred to the Advisory Committee are subject to an automatic minimum waiting period of three months between leaving Crown employment and taking up an outside appointment, unless they have been appointed from outside the Civil Service on a limited period contract. The Advisory Committee has the discretion to recommend waiving the minimum waiting period if, in the Committee's view, the appointment is one which is entirely unconnected with the applicant's official knowledge and no questions of propriety arise. Although applicants serving on limited period contracts will not be required to serve the *automatic* waiting period, approval of applications may be subject to waiting periods or other conditions in the same way as any other application.

18. Appointments approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments which are subsequently taken up may be the subject of a public announcement. Staff at those levels are required to confirm to their department (or former department) their intentions to take up any appointment for which an application has been considered by the Committee. The new employer may wish to include a reference to the Prime Minister's approval in their own announcement of the appointment, and applicants should discuss with the department and the new employer the terms of the statement; in other cases, the Government reserves the right to publish the terms of the Prime Minister's decision. A consolidated record of all appointments taken up will be included in the Advisory Committee's annual report.

Procedures for Departments and Agencies

Making staff aware of the rules

19. Departments and agencies must:
- a. Draw the attention of staff to the existence of the rules in letters of appointment. Departments and agencies are advised to take special care to explain to staff recruited from outside the Crown service either on secondment or on a limited period contract their position under the rules on appointment.
 - b. Include a copy of the rules in departmental and agency staff handbooks.
 - c. Issue regular reminders to staff at all levels about the rules and the circumstances in which they apply, concentrating on particular areas as necessary.
 - d. Require members of the Senior Civil Service in signing their contracts of employment to acknowledge in writing that they have seen and are conversant with the rules - and ask them to provide a further, similar acknowledgement on retirement or resignation from the Crown Service or at the end of a period appointment.
 - e. Remind all staff of the rules:
 - On retirement.
 - On resignation.
 - At the end of a limited period appointment.

(In the case of staff who resign or come to the end of a limited period appointment this should normally take the form of providing them with a copy of the rules and an application form. The Cabinet Office model application form incorporates the relevant extracts from the rules for this purpose.)

20. Departments and agencies are advised:
- a. To take all opportunities provided by letters of resignation, exit interviews and requests for references to check whether an application under the rules is necessary; and

¹⁶⁹ If the Advisory Committee believes that the appointment is unsuitable, it may add that advice to its recommendation that the application be subject to a waiting period of two years, and that advice will be available for publication.

- b. To ensure that personnel and line managers of staff working in areas which involve contact of a commercial nature with outside organisations, particularly on procurement or contract work, are issued with regular reminders to monitor resignations by staff employed in those areas to ensure that applications are made where necessary.

Approval of applications

21. Decisions on applications, other than those referred to the Prime Minister through the Advisory Committee and those by Special Advisers, rest with the Minister in charge of the Department after taking advice of the Cabinet Office as appropriate. The Minister may, however, approve arrangements under which defined categories of cases may be decided without reference to the Minister. Decisions on applications by Special Advisers taken at departmental level are the responsibility of the permanent Head of the Department after taking advice of the Cabinet Office, as appropriate, which may consult the Head of the Home Civil Service or refer the application to the Advisory Committee.

22. In cases where it is proposed to impose a waiting period or other conditions, applicants should be given the opportunity of having an interview with an appropriate departmental officer if they so choose.

23. There may be occasions when a Minister decides that the national interest is the overriding consideration, regardless of the circumstances of the case. In all such cases, the normal procedures for dealing with applications must first be followed, including reference to the Advisory Committee where that is appropriate. A decision that the national interest should override other considerations may only be taken by the Minister in charge of the department or, in the case of applications referred to the Advisory Committee, by the Prime Minister.

24. Departments and agencies must:

- a. Inform prospective employers of any conditions which have been attached to the approval of an appointment.
- b. Make a careful record of all decisions to approve appointments under the rules, noting in particular any conditions that were applied.
- c. Submit quarterly statistical returns, including nil returns, of applications dealt with under the rules to the Cabinet Office in the form requested.

Procedure for dealing with applications

25. All Permanent Secretary posts; other posts in departments which satisfy all of the following criteria: have a JESP score of 18 or more, have a pay range within the top three pay bands, and where the post reports direct to a Permanent Secretary or is itself the Head of a Department or Agency; and specialists and Special Advisers of equivalent standing.

Applications are normally approved by the Prime Minister on the advice of the Advisory Committee on Business Appointments (apart from those from Special Advisers). All cases must be referred to the Cabinet Office which will refer them to the Advisory Committee unless the Head of the Home Civil Service agrees that such reference would be inappropriate, for example where the appointment is to a non-commercial body, such as a university. Applications from Special Advisers of equivalent standing will be approved by the Head of the Home Civil Service on the advice of the Advisory Committee.

26. Other Heads of Department; other postholders in the Senior Civil Service in salary band 4 and above and in a post attracting a minimum JESP score of 13; and specialists and Special Advisers of equivalent standing.

All applications must be referred to the Cabinet Office which will consult the Head of the Home Civil Service.

27. Other members of the Senior Civil Service; and specialists and Special Advisers of equivalent standing.

Departments and agencies must consult the Cabinet Office unless:

- The applicant has had no official dealings with the prospective employer at any time during his or her period of Crown Service and there appears to be no risk of criticism; or
- The employment is with a non-commercial organisation.

28. Staff outside the Senior Civil Service.

Departments and agencies do not need to consult the Cabinet Office where:

- The applicant has had no official dealings with the prospective employer in the previous two years, or at most dealings of a casual nature; and
- There appears to be no risk of the disclosure of commercially sensitive information; or
- The appointment is with a non-commercial organisation.



29. Departments and agencies may refer any application to the Cabinet Office for advice. Any application may be referred to the Advisory Committee if the Head of the Home Civil Service and the Departmental Minister so agree.

30. When referring cases to the Cabinet Office departments must submit:

- a. A copy of a completed and countersigned application form.
- b. A covering letter, giving their own assessment of the application, including the outcome of any consultations with competitors of the prospective employer, and their proposed or recommended course of action.

31. Guidance for departments and agencies preparing assessments of applications for submission to Cabinet Office and considering applications for departmental approval is provided in Section 4.3 Annex B.

4.3 ANNEX B: GUIDANCE FOR DEPARTMENTS AND AGENCIES ON THE RULES ON THE ACCEPTANCE OF OUTSIDE APPOINTMENTS BY CROWN SERVANTS

1. The rules are designed primarily to counter any suspicion that an appointment might be a “reward for past favours” granted by the applicant to the employer, or that a particular employer might gain an unfair advantage over its competitors by employing someone who had access to what they might legitimately regard as their own “trade secrets”.

2. An appointment might also be sensitive because of the employer’s relationship with the department and because of the nature of any information which the applicant possesses about Government policy.

3. While appointments must not only be but also be seen to be free from reproach and departments must therefore take account of public perception, departments should be prepared to defend an appointment which they were otherwise willing to approve when public concern can be shown to be unjustifiable.

The employer and the applicant

4. In most cases problems will occur only if the applicant has had some degree of contact with the prospective employer, giving rise to criticism that the post is a “reward for past favours”. Departments are asked to take the following into account:

- a. How much of the contact was in the course of official duties.
- b. How significant was the contact.
- c. The nature of the proposed employment.
- d. The connection between the new job and the applicant’s previous official duties.

5. In order to establish whether the applicant was able to exert any degree of influence over the outcome of contractual or other dealings with the prospective employers, departments are advised to establish:

- a. Whether the individual was acting as a member of a team, jointly with other individuals in the department or in Government more widely, or taking sole responsibility;
- b. Whether the employer benefitted substantially from such dealings;
- c. Whether contact was direct;
- d. Whether it was indirect (i.e. through those for whom the applicant was responsible, whether or not they normally worked for him or her).

6. Departments are advised to take into account contacts in the course of official duty which have taken place:

- a. At any time in the two years before resignation or retirement;
- b. Earlier, where the association was of a continued or repeated nature.

7. Departments are advised to consider in particular whether the applicant has been:

- a. Dealing with the receipt of tenders from the employer;
- b. Dealing with the award of contracts to the employer;
- c. Dealing with the administration or monitoring of contracts with the employer;
- d. Giving professional or technical advice about such contracts whether before or after they were awarded;
- e. Involved in dealings of an official but non-contractual nature with the employer (this is particularly important in the circumstances set out in paragraph 9 below).

8. Departments should consider the circumstances of an applicant's departure as a component of considering each application on its merits. Staff-reduction policies will not justify reducing standards of propriety, or any weakening of the element of protection which the rules offer to third parties in respect of trade secrets. If a civil servant is asked to retire, or is offered early retirement, at relatively short notice, or is unexpectedly made redundant, any presumption that he or she had been paving the way to subsequent employment by offering favours to potential employers may largely be removed. Conversely a protracted period of uncertainty might heighten concerns that individuals were anticipating redundancy by cultivating potential employers improperly. On balance, where departments and agencies intend to reduce numbers during a relatively short period of a year or so, unexpected departures should normally be considered as a factor mitigating any concerns on grounds of rewards.

The employer and the Government

9. The relationship of the prospective employer to the Government may be a relevant factor in considering applications. Departments are advised to pay special attention to appointments where the employer:

- a. Has a contractual relationship with the department.
- b. Is regulated by the department.
- c. Receives subsidies, loans, guarantees or other forms of financial assistance from the department.
- d. Is one in which the Government is a shareholder; or
- e. Is one with which departments or branches of Government or the Armed Services are, as a matter of course, in a special relationship.

Overseas employers

10. The same considerations apply to foreign publicly-owned institutions or companies as to their UK counterparts. If the prospective employer is a foreign government, departments are advised to consider whether the applicant has information that would benefit that government to the detriment of HM Government or its allies. This can arise where the person:

- a. Has been giving advice to HM Government on policies affecting the foreign government; or
- b. Would have been in a position to gain special knowledge of HM Government's policies and intentions concerning the foreign government.

Government policy or business

11. Many Crown servants deal with private interests on behalf of the Government. They have special knowledge of how the Government would be likely to react in particular circumstances. Departments are advised to consider whether the application could be, or could be thought to be, significantly helpful to the employer in dealing with matters where policy is developing or legislation is being prepared in a way which might disadvantage competitors of that employer. This applies in particular to specific areas where:

- a. There has been a negotiating relationship between the Department and the employer.
- b. The applicant has been involved in policy discussions within the department leading to a decision of considerable benefit to the employer.
- c. The applicant has been involved in policy discussions within the department, knowledge of which might give the employer an improper advantage over its competitors; or
- d. Where there is a risk of public criticism that the applicant might have scope to exploit contacts in his or her former department for commercial purposes.

In such cases, departments are asked to consider the implications of the applicant's joining the employer, and be guided accordingly.

The employer and competitors' trade secrets

12. Appointments might be criticised on the grounds that the applicant had access to information about his or her prospective employer's competitors which they could legitimately regard as "trade secrets". Concern on this score can arise whether or not the applicant has had previous dealings with the prospective employer. Departments are strongly advised to consult competitors as a matter of course preferably using a standard letter based on the Cabinet Office model letter, to see whether they have any objections to the appointment.

Consultancies

13. Individuals who are to be employed on a consultancy basis (either for a firm of consultants or as an independent, self-employed consultant, competing for commissions in the open market—a "brass plate" consultancy) should be treated in the same way as other applicants under the rules. Extra care is needed, however, in dealing with such applications.



14. In the case of an applicant wishing to take up a salaried appointment with a firm of consultants, the “rewards for past favours” issue will relate almost exclusively to the nature of any previous dealings between the applicant and the firm he or she is seeking to join. Departments will, however, need to consider the “trade secrets” question both from the point of view of any competitors of the consultancy firm and then, more generally from the point of view of the service which the applicant will be offering on behalf of the consultant. It may be necessary to impose conditions on the appointment to protect the “trade secrets” of firms with which the applicant or the department had dealings.

15. Where an applicant wishes to set up a “brass plate” consultancy, the question of “rewards for past favours” does not arise in the usual way. But departments will wish to keep in mind the need:

- a. To counter any suspicion of impropriety that might arise if such individuals were to be given lucrative contracts by clients with which they or their former departments had dealings; and
- b. To protect “trade secrets” to which such individuals may have had access. There may be circumstances in which it would be undesirable for an independent consultant to offer services to a particular client where he or she has had access to the trade secrets of a competitor of the client. The fact that the competitor might also be free to use the same consultant, but did not choose to do so would not make the information any less sensitive or negate the potential advantage which could be gained by the client.

In approving applications to set up “brass plate” consultancies departments will, therefore, need to consider carefully the imposition of conditions in cases where such considerations apply.

16. Departments will also need to consider whether to apply conditions limiting contacts between applicants proposing to work as consultants and their former departments. This may be particularly relevant in the case of staff at senior levels, where there is a risk of public criticism that they could be exploiting contacts in their former departments for commercial purposes.

4.4 CONDUCT: POLITICAL ACTIVITIES

Rules

4.4.1 Departments and agencies must make clear to staff any restrictions on their taking part in political activities. Political activities that may be subject to restriction are defined as follows:

- a. At national level: holding, in a party political organisation, office which impinges wholly or mainly on party politics in the field of Parliament or the European Parliament; speaking in public on matters of national political controversy; expressing views on such matters in letters to the Press, or in books, articles or leaflets; being announced publicly as a candidate for Parliament or the European Parliament; and canvassing on behalf of a candidate for Parliament or the European Parliament or on behalf of a political party; and
- b. At local level: candidature for, or co-option to, local authorities; holding in a party political organisation, office impinging wholly or mainly on party politics in the local field; speaking in public on matters of local political controversy; expressing views on such matters in letters to the Press, or in books, articles or leaflets; and canvassing on behalf of candidates for election to local authorities or a local political organisation.

4.4.2 Departments and agencies must allow civil servants in industrial and non-office grades the freedom to take part in all political activities. These staff are known as the “politically free” category. The groups of staff to be included in this category are subject to the approval of the Minister for the Civil Service (Servants of the Crown (Parliamentary, European Parliamentary and Northern Ireland Assembly Candidature) Order 1987).

4.4.3 Departments and agencies have discretion to permit other staff to take part in local or national political activities in accordance with paragraphs 4.4.9 and 4.4.10 below. In exercising their discretion, departments and agencies must pay due regard to the guidelines and principles in Annex A.

4.4.4 In giving permission to participate in political activities to groups of staff or individuals, departments and agencies must make clear to them that the permission can be withdrawn at any time and without prior notice if there is a change in relevant circumstances.

4.4.5 Departments and agencies must give civil servants who are refused permission to take part in political activities, or who have permission to do so withdrawn, a full explanation of the reasons for the decision, and inform them of their right of appeal to the Civil Service Appeal Board (see Section 12.1, Appeals).

4.4.6 Departments and agencies must reinstate civil servants in the politically free group who resign to stand for election (see paragraph 4.4.20 below) provided they apply within a week of declaration day if they are not elected. If they are elected, they must still be subsequently reinstated if:

- a. They cease to be a Member after an absence from the Civil Service of not more than 5 years; and

- b. They have had at least 10 years service before their election; and
- c. They apply for reinstatement within 3 months of ceasing to be a Member.

If the first two of these conditions are not met, reinstatement is at the discretion of the department or agency, but departments and agencies are encouraged to treat applications sympathetically.

4.4.7 Departments and agencies have discretion to reinstate civil servants who are not in the politically free category following resignation to stand for election to Parliament or the European Parliament. Discretion to reinstate should normally be exercised only where it is possible to post staff, at least initially, to non-sensitive areas.

4.4.8 Where a civil servant is reinstated, the period of the break will not count for pay or superannuation purposes. Salary will not be payable during the break.

Standards of conduct to be reflected in staff handbooks

4.4.9 Civil Servants in “the politically restricted” category i.e. members of the Senior Civil Service and civil servants at levels immediately below the Senior Civil Service, plus members of the Fast Stream Development Programme (Administrative and European), must not take part in national political activities (paragraph 4.4.1a). (Before 1 April 1996 this category would have included all staff at Grade 7 level and above, plus Administration Trainees and Higher Executive Officers (D)). They must seek permission to take part in local political activities (paragraph 4.4.1b) and must comply with any conditions laid down by their department or agency.

4.4.10 Civil servants outside the “politically restricted” category (paragraph 4.4.9) and the “politically free” category (paragraph 4.4.2) must seek permission to take part in national or local political activities (paragraph 4.4.1) unless they are in a grade or area that has already been given permission to do so by means of a specific mandate from the department or agency. Where they already have permission under such a mandate, they must notify the department or agency of intended political activities prior to taking them up. They must comply with any conditions laid down by their department or agency.

4.4.11 Civil servants must not take part in any political activity when on duty, or in uniform, or on official premises.

4.4.12 Civil servants must not attend in their official capacity outside conferences or functions convened by or under the aegis of a party political organisation.

4.4.13 Civil servants not in the politically free category must not allow the expression of their personal political views to constitute so strong and so comprehensive a commitment to one political party as to inhibit or appear to inhibit loyal and effective service to Ministers of another party. They must take particular care to express comment with moderation, particularly about matters for which their own Ministers are responsible; to avoid comment altogether about matters of controversy affecting the responsibility of their own Ministers, and to avoid personal attacks.

4.4.14 They must also take every care to avoid any embarrassment to Ministers or to their department or agency which could result, inadvertently or not, from bringing themselves prominently to public notice, as civil servants, in party political controversy.

4.4.15 Civil servants who are not in the politically free category and who have not been given permission to engage in political activities must retain at all times a proper reticence in matters of political controversy so that their impartiality is beyond question.

4.4.16 Civil servants do not need permission to take part in activities organised by their trade unions. Elected trade union representatives may comment on Government policy when representing the legitimate interests of their members, but in doing so they must make it clear that they are expressing views as representatives of the union and not as civil servants.

4.4.17 Civil servants given permission to take part in local political activities must tell their department or agency if they are elected to a local authority.

4.4.18 Civil servants given permission to take part in political activities must give up those activities if they are moved to a post where permission cannot be granted.

4.4.19 Civil servants are disqualified from election to Parliament (House of Commons Disqualification Act 1975) and from election to the European Parliament (European Parliamentary Elections Act 1978). They must therefore resign from the Civil Service before standing for election in accordance with paragraphs 4.4.20 and 4.4.21.

4.4.20 Civil servants in the politically free group are not required to resign on adoption as a prospective candidate. But to prevent their election being held to be void they must submit their resignation before they give their consent to nomination in accordance with the Parliamentary Election Rules.

4.4.21 All other civil servants, including civil servants on secondment to outside organisations, must comply with the provisions of the Servants of the Crown (Parliamentary, European Parliamentary and



Northern Ireland Assembly Candidature) Order 1987. They must not issue an address to electors or in any other manner publicly announce themselves or allow themselves to be publicly announced as candidates or prospective candidates for election to Parliament or the European Parliament; and they must resign from the Civil Service on their formal adoption as a Parliamentary candidate or prospective candidate in accordance with the procedures of the political party concerned. Civil servants not in the politically free group who are candidates for election must complete their last day of service before their adoption papers are completed.

4.4 ANNEX A: GUIDELINES AND PRINCIPLES ON PARTICIPATION IN POLITICAL ACTIVITIES

1. In exercising discretion over participation by civil servants in the political activities described in paragraph 4.4.3, departments and agencies must pay regard to the following principles:
 - a. Permission should normally only be refused where civil servants are employed in sensitive areas in which the impartiality of the Civil Service is most at risk. Permission may be granted to individuals or groups to undertake either only national or only local political activities.
 - b. Permission should normally be granted in all other circumstances, provided departments and agencies are satisfied that the civil servants concerned are aware of the need to observe the principles set out in paragraphs 4.4.10 and 4.4.11 and the other rules governing the conduct of civil servants, including those relating to the use of official information.
2. In applying these principles, departments and agencies should regard posts as being “sensitive” if:
 - a. They are closely engaged in policy assistance to Ministers (or to non-departmental Crown bodies) such as tendering advice or executing immediate Ministerial directives.
 - b. They are in the private offices of Ministers or senior officials or in areas which are politically sensitive or subject to national security.
 - c. They require the postholder regularly to speak for the Government or their department or agency in dealings with commercial undertakings, pressure groups, local government, public authorities or any other bodies.
 - d. The postholder represents the Government in dealing with overseas governments; or
 - e. The postholder is involved in a significant amount of face to face contact with members of the public who may be expected to know of the postholder’s political activities and makes, or may appear to make, decisions directly affecting them personally.
3. Departments and agencies are advised to apply as helpful a postings policy as possible to staff who wish to become or remain politically active, provided the staff concerned understand that this may have the effect of limiting their range of experience; and to identify blocks of posts in which staff may be granted advance permission to take part in the political activities described in paragraph 4.4.1.
4. Where a civil servant is adopted as a parliamentary candidate and is therefore required to resign, departments and agencies may, at their discretion, make an ex-gratia payment equivalent to the period of notice to be given to the individual if the adoption process does not reasonably allow for the individual to give full notice.

4.5 DISCIPLINE: RULES AND CODE OF PRACTICE

4.5.1 The Minister for the Civil Service is responsible for the central framework outlined in paragraphs 4.5.2 to 4.5.15.

4.5.2 Departments and agencies are responsible for their own disciplinary arrangements within the central framework set out below. They must:

- a. Ensure that staff are aware of the disciplinary procedures that will apply to them and of the circumstances in which they may be invoked; and
- b. Reflect the rules at paragraphs 4.5.10 to 4.5.16 and Annex A in their own disciplinary procedures.

The attention of departments and agencies is drawn to the following as guides to the drawing up of their own disciplinary procedures:

- a. The ACAS Code of Practice on Disciplinary and Grievance Procedures (http://www.acas.org.uk/publications/pub_problems.html);
- b. The Equal Opportunities Commission Code of Practice for the elimination of discrimination on grounds of sex and marriage and the promotion of equality of opportunity in employment (<http://www.eoc.org.uk/index.asp>); and
- c. The Commission for Racial Equality Code of Practice: Race Relations (<http://www.cre.gov.uk>).

These Codes of Practice are given significant weight in Employment Tribunal cases.

4.5.3 Personnel Information Note (PIN) 42 (<http://www.civilservice.gov.uk/pins>) provides guidance following advice from the President of the Employment Tribunals (England and Wales) that Employment Tribunals would be critical of disciplinary procedures which denied an employee the opportunity to make representations at a hearing direct to the decision making officer.

4.5.4 Recognised trade unions have the right to make representations on procedural matters and on general principles underlying disciplinary action. Such representations may be made centrally and at departmental and agency level.

4.5.5 Disciplinary procedures may be invoked in certain circumstances in addition to, or instead of, criminal investigations or legal proceedings. Departments and agencies should consult their legal advisers before taking disciplinary action in parallel with criminal proceedings.

4.5.6 It is for departments and agencies to define the circumstances in which initiation of disciplinary procedures may be appropriate. It is not necessary to attempt to define every circumstance. However departments' and agencies' rules for staff must make clear the circumstances in which the application of the disciplinary procedures may be considered. These must include:

- a. Breaches of the organisation's standards of conduct or other forms of misconduct (see paragraph 4.1.4); and
- b. Any other circumstances in which the behaviour, action or inaction of individuals significantly disrupts or damages the performance or reputation of the organisation.

4.5.7 The central rules on the limited efficiency and inefficiency procedures are given in Section 6.3.

4.5.8 The sanctions applied as a result of disciplinary proceedings are a matter for the department or agency concerned, in the light of the circumstances of each case.

Rules

Disciplinary procedures

4.5.9 Subject to the following rules, the level at which decisions are made whether or not to proceed with disciplinary action, the disciplinary procedures to be followed, and the arrangements for appeals, are matters for departments and agencies.

4.5.10 Disciplinary decisions must be taken by someone at least one level higher than the individual concerned and appeals must be heard by someone at least one level higher than the person making the disciplinary decision. Wherever possible, appeal decisions should be taken by someone independent of the original disciplinary decision.

4.5.11 Decisions concerning Permanent Secretary, Heads of Department and their direct equivalents and any other Heads of Department must be taken by the Head of the Home Civil Service after consultation with the Minister of the Department concerned and, as appropriate, the Prime Minister. Below that level, decisions concerning postholders in Senior Civil Service salary band 4 and above with a minimum JESP score of 13 must be taken by the Permanent Head of the Department or Chief Executive of the Agency. Decisions concerning Chief Executives below that level must be taken by the Permanent Head of Department. Individuals in these cases have a right of appeal to the Head of the Home Civil Service.

4.5.12 Decisions not to proceed with disciplinary action in cases of serious fraud, other than where the individual is being prosecuted, must be taken by the Head of Department or Chief Executive of the agency after consultation with the responsible Minister.

Trade union representation

4.5.13 Staff must be given the right to the assistance of a trade union representative or colleague throughout formal disciplinary proceedings.

Appeals

4.5.14 Departments and agencies must make clear to individuals their rights of appeal against disciplinary decisions. They must allow staff who are dismissed to appeal to the Civil Service Appeal Board if they are eligible to do so (see paragraph 12.1.27). They must allow a right of appeal under the personal grievance procedure (see paragraph 12.1.4) to:

- a. Staff who are dismissed but ineligible to appeal to the Civil Service Appeal Board; and
- b. Staff who are not dismissed.

Suspension from duty

4.5.15 Individuals under criminal investigation or disciplinary procedures may be suspended from duty if necessary to protect the public interest. Pay may be withheld wholly or partly during suspension. During



suspension, only basic pay (defined as that which would be paid during the first six months of sickness absence) may be paid, and departments and agencies have discretion to decide whether the individual on suspension should receive full basic pay or a proportion of it. Pay withheld during suspension may be forfeited wholly or partly as a result of a disciplinary decision. Any pay not forfeited must be paid retrospectively and reckoned under the Principal Civil Service Pension Scheme in the normal way.

4.5.16 Departments and agencies must apply, where appropriate, the rules that apply to the recovery of losses to public funds on dismissal and to the forfeiture of superannuation benefits in respect of dismissal for certain criminal offences. These rules are set out in Annex A.

4.5 ANNEX A: RECOVERY OF LOSSES TO PUBLIC FUNDS

1. On dismissal for an offence involving loss to public funds, any sums unpaid, for example in respect of salary or wages up to the last day of duty, or of income tax overpaid on salary may be withheld as a set-off against the loss. Similar set-offs should be made if someone who would have been dismissed for an offence resigns before the dismissal can be put into effect. The Inland Revenue should be notified of any sums so withheld in respect of income tax refund, and at the same time be requested themselves to withhold the refund of overpayment of tax. If the amount of tax from these sources is less than the loss to public funds, it may be possible to recover the balance from any superannuation benefits payable. Civil Service Pensions Division, Cabinet Office should be consulted at an early stage and their authority obtained for the deduction to be made.

Forfeiture of Superannuation Benefits (see also Section 12.1)

2. Automatic loss of pension rights applies only where a civil servant is convicted of treason.
3. The Cabinet Office exercises the power under rule 8.2 of the Principal Civil Service Pension Scheme to withhold superannuation benefits in whole or in part if a civil servant or former civil servant is convicted of:
 - a. one or more offences under the Official Secrets Act 1989 for which the person concerned has been sentenced to a term of imprisonment of at least ten years or has been sentenced on the same occasion to two or more consecutive terms amounting in the aggregate to at least 10 years; or
 - b. an offence in connection with any employment to which the PCSPS applies, being an offence which is certified by a Minister of the Crown either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service.
4. The guaranteed minimum pension payable under the provisions of the Social Security Pensions Act 1975, as amended, must be paid in the case of paragraph 3b, but that element of a pension can be withheld if forfeiture is applied under paragraph 3a or as a result of a conviction for treason. Before the Cabinet Office exercises this power to withhold superannuation benefits, the case will be discussed on a “without prejudice” basis with the trade union side.
5. The Cabinet Office will normally advise Ministers on the certification of offences in accordance with paragraph 3b. Employment Conditions and Statistics Division, Cabinet Office should therefore be consulted at an early stage in any case in which criminal proceedings are pending and the charges are such that a withholding of superannuation benefits under either paragraph 3a or b will need to be considered. The decision on forfeiture is however a matter for the Civil Service Pensions Division, Cabinet Office which should be kept informed of discussions. Departments and agencies should subsequently notify both Divisions of the outcome of the trial and of the possibility of an appeal. If there is a conviction, the department or agency concerned may make recommendations about the forfeiture of superannuation benefits but these recommendations should not be made known to the individual(s) concerned. They should, however, be supplied with a copy of rule 8.2 of the PCSPS and advised that representations in writing about any matters relevant to the question of forfeiture may be submitted. Such representations may be made on their behalf by a colleague or trade union representative.
6. The department or agency concerned will be told whether or not it is proposed to withhold superannuation benefits and, if forfeiture is intended, what benefits will be withheld. The department or agency will be told also the period (normally 21 days) within which notice of intent to appeal must be made by the person concerned. It will be for the employing department or agency to pass that information to the person. Attention should be specifically drawn to the right of appeal and a further copy of rule 8.2 of the PCSPS should be provided. The individual should be advised that in the event of lodging an appeal full written representations may be made, prior to the hearing, to the Civil Service Appeal Board, whose judgement on whether or not, or to what extent, superannuation benefits should be forfeited will be accepted by the Cabinet Office. No action, therefore, should be taken either to pay superannuation benefits to a serving member of staff or to withhold them from somebody who is already retired until a final decision is promulgated by the Cabinet Office.

C. TREASURY'S CODE OF CONDUCT

THE TREASURY VALUES AND THE TREASURY'S CODE OF CONDUCT

The Treasury values, and the code of conduct are meant to explain clearly, to personnel at the Treasury, what behaviours the Treasury Management Board want to develop and reward in the future.

The code of conduct is a statement of rights and responsibilities in the area of dealing with colleagues and business contacts at work.

Internal links

[Code of Conduct](#)

The Treasury values are a simple and clear statement of how we should all work.

Internal links

[Treasury Values](#)

[About HM Treasury index page](#)



TREASURY CODE OF CONDUCT

Aim

- To provide a framework which delivers to every member of staff the feeling that they are a valued member of the department.
- By recognizing staff who treat colleagues and business contacts properly. And by refusing to employ, promote or reward staff who consistently do not meet these high standards and who will not accept guidance or training in order to do so.
- So as to create an atmosphere of harmony and cooperation.

Code

You have the right to:

- Be spoken to politely.
- Be treated with respect.
- Have your life and commitments outside the office respected.
- Be assertive.
- Expect colleagues to treat you as a fellow professional.
- Speak out if you are the victim of bullying, vindictiveness, verbal or physical aggression and to expect your complaint to be taken seriously.

You have a responsibility to:

- Treat all colleagues as individuals and show sensitivity to their needs.
- Praise work done well and balance praise against any constructive criticism of work that could have been done better.
- Be assertive and not aggressive.
- Listen to what others say and respect their point of view.
- Take action swiftly if you witness or are made aware of unreasonable behaviour. You should not assume it is someone else's problem.
- To try to learn from your mistakes in handling relations with others.
- Take every complaint or disagreement seriously and work to find common ground.

HM TREASURY'S VALUES

What sort of an organisation do we want to be?

The Treasury values –RESPECT– were recently reviewed by a group which included people from across the Treasury. The group concluded that the underlying principles were still valid and should continue to be the standards by which we should all operate; but that the language should be updated. They also suggested an addition, thinking strategically, which embraces the Treasury's continuing shift from detailed monitoring to setting the strategic agenda. The Treasury updated values are:

Focussing on	R	esults
Valuing	E	veryone
	S	howing integrity
Developing	P	rofessionalism
Managing	E	ffectively
	C	ommunicating well
	T	hinking Strategically

D. COMMISSIONERS FOR REVENUE AND CUSTOMS ACT (2005)

Commissioners for Revenue and Customs Act 2005

2005 Chapter 11 - *continued*



An Act to make provision for the appointment of Commissioners to exercise functions presently vested in the Commissioners of Inland Revenue and the Commissioners of Customs and Excise; for the establishment of a Revenue and Customs Prosecutions Office; and for connected purposes.

[7th April 2005]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Commissioners and officers

1. The Commissioners

- (1) Her Majesty may by Letters Patent appoint Commissioners for Her Majesty's Revenue and Customs.
- (2) The Welsh title of the Commissioners shall be *Comisyndwyr Cyllid a Thollau Ei Mawrhydi*.
- (3) A Commissioner-
 - (a) May resign by notice in writing to the Treasury, and
 - (b) Otherwise, shall hold office in accordance with the terms and conditions of his appointment (which may include provision for dismissal).
- (4) In exercising their functions, the Commissioners act on behalf of the Crown.
- (5) Service as a Commissioner is service in the civil service of the State.

2. Officers of Revenue and Customs

- (1) The Commissioners may appoint staff, to be known as officers of Revenue and Customs.
- (2) A person shall hold and vacate office as an officer of Revenue and Customs in accordance with the terms of his appointment (which may include provision for dismissal).
- (3) An officer of Revenue and Customs shall comply with directions of the Commissioners (whether he is exercising a function conferred on officers of Revenue and Customs or exercising a function on behalf of the Commissioners).
- (4) Anything (including anything in relation to legal proceedings) begun by or in relation to one officer of Revenue and Customs may be continued by or in relation to another.
- (5) Appointments under subsection (1) may be made only with the approval of the Minister for the Civil Service as to terms and conditions of service.
- (6) Service in the employment of the Commissioners is service in the civil service of the State.
- (7) In Schedule 1 to the Interpretation Act 1978 (c. 30) (defined expressions) at the appropriate place insert-



""Officer of Revenue and Customs" has the meaning given by section 2(1) of the Commissioners for Revenue and Customs Act 2005."

3. Declaration of confidentiality

- (1) Each person who is appointed under this Act as a Commissioner or officer of Revenue and Customs shall make a declaration acknowledging his obligation of confidentiality under section 18.
- (2) A declaration under subsection (1) shall be made-
 - (a) As soon as is reasonably practicable following the person's appointment, and
 - (b) In such form, and before such a person, as the Commissioners may direct.

- (3) For the purposes of this section, the renewal of a fixed term appointment shall not be treated as an appointment.

4. "Her Majesty's Revenue and Customs"

- (1) The Commissioners and the officers of Revenue and Customs may together be referred to as Her Majesty's Revenue and Customs.
- (2) The Welsh title of the Commissioners and the officers of Revenue and Customs together shall be *Cyllid a Thollau Ei Mawrhydi*.
- (3) In Schedule 1 to the Interpretation Act 1978 (defined expressions) at the appropriate place insert-



""Her Majesty's Revenue and Customs" has the meaning given by section 4 of the Commissioners for Revenue and Customs Act 2005."

Functions

5. Commissioners' initial functions

- (1) The Commissioners shall be responsible for-
- (a) The collection and management of revenue for which the Commissioners of Inland Revenue were responsible before the commencement of this section.
- (b) The collection and management of revenue for which the Commissioners of Customs and Excise were responsible before the commencement of this section, and
- (c) The payment and management of tax credits for which the Commissioners of Inland Revenue were responsible before the commencement of this section.
- (2) The Commissioners shall also have all the other functions which before the commencement of this section vested in-
- (a) the Commissioners of Inland Revenue (or in a Commissioner), or
- (b) the Commissioners of Customs and Excise (or in a Commissioner).
- (3) This section is subject to section 35.
- (4) In this Act "revenue" includes taxes, duties and national insurance contributions.

6. Officers' initial functions

- (1) A function conferred by an enactment (in whatever terms) on any of the persons listed in subsection (2) shall by virtue of this subsection vest in an officer of Revenue and Customs.
- (2) Those persons are-
- (a) An officer as defined by section 1(1) of the Customs and Excise Management Act 1979 (c. 2).
- (b) A person acting under the authority of the Commissioners of Customs and Excise.
- (c) An officer of the Commissioners of Customs and Excise.
- (d) A customs officer.
- (e) An officer of customs.
- (f) A customs and excise officer.
- (g) An officer of customs and excise, and
- (h) A collector of customs and excise.
- (3) This section is subject to sections 7 and 35.

7. Former Inland Revenue matters

- (1) This section applies to the matters listed in Schedule 1.
- (2) A function conferred by an enactment (in whatever terms) on any of the persons specified in subsection (3) shall by virtue of this subsection vest in an officer of Revenue and Customs-
- (a) If or in so far as it relates to a matter to which this section applies, and

- (b) In so far as the officer is exercising a function (whether or not by virtue of paragraph (a)) which relates to a matter to which this section applies.
- (3) Those persons are-
 - (a) An officer of the Commissioners of Inland Revenue.
 - (b) An officer of the Board of Inland Revenue.
 - (c) An officer of inland revenue.
 - (d) A collector of Inland Revenue.
 - (e) An inspector of taxes.
 - (f) A collector of taxes.
 - (g) A person authorised to act as an inspector of taxes or collector of taxes for specific purposes.
 - (h) An officer having powers in relation to tax.
 - (i) A revenue official.
 - (j) A person employed in relation to Inland Revenue (or "the Inland Revenue"), and
 - (k) An Inland Revenue official.
- (4) In so far as an officer of Revenue and Customs is exercising a function which relates to a matter to which this section applies, section 6(1) shall not apply.
- (5) This section is subject to section 35.

8. Power to transfer functions

- (1) After section 5 of the Ministers of the Crown Act 1975 (c. 26) (transfer of functions orders: supplemental) insert-

"5A The Commissioners for Her Majesty's Revenue and Customs



- (1) The Commissioners for Her Majesty's Revenue and Customs shall be treated for the purposes of section 1(1)(a) and (c) as if they were a Minister of the Crown.
- (2) The officers of Revenue and Customs shall be treated for the purposes of section 1(1)(a) and (c) as if they were a Minister of the Crown.
- (3) An Order in Council under this Act may not provide for the transfer of a function specified in section 5(1) of the Commissioners for Revenue and Customs Act 2005.
- (4) An Order in Council under section 1 above transferring a function to the Commissioners or to officers of Revenue and Customs-
 - (a) May restrict or prohibit the exercise of specified powers in relation to that function, and
 - (b) May provide that the function may be exercised only with the consent of a specified Minister of the Crown".
- (2) For the purposes of sections 63 and 108 of the Scotland Act 1998 (c. 46) (transfer of functions)-
 - (a) the Commissioners shall be treated as a Minister of the Crown, and
 - (b) the officers of Revenue and Customs shall be treated as a Minister of the Crown.
- (3) An Order in Council under section 63 or 108 of that Act-
 - (a) May not make provision about a function specified in section 5(1) of this Act, and
 - (b) If it transfers a function to the Commissioners or to officers of Revenue and Customs-
 - (i) May restrict or prohibit the exercise of specified powers in relation to that function, and
 - (ii) May provide that the function may be exercised only with the consent of a specified member of the Scottish Executive.
- (4) For the purposes of section 22 of and Schedule 3 to the Government of Wales Act 1998 (c. 38) (transfer of functions)-
 - (a) The Commissioners shall be treated as a Minister of the Crown, and
 - (b) The officers of Revenue and Customs shall be treated as a Minister of the Crown.



- (5) An Order in Council under section 22 of that Act may not make provision about a function specified in section 5(1) of this Act.

9. Ancillary powers

- (1) The Commissioners may do anything which they think-
- (a) Necessary or expedient in connection with the exercise of their functions, or
 - (b) Incidental or conducive to the exercise of their functions.
- (2) This section is subject to section 35.

10. The Valuation Office

- (1) An officer of Revenue and Customs may provide a valuation of property-
- (a) For a purpose relating to the functions of Her Majesty's Revenue and Customs, or
 - (b) At the request of any person who appears to the officer to be a public authority, or
 - (c) At the request of any other person if the officer is satisfied that the valuation is necessary or expedient in connection with-
 - (i) The exercise of a function of a public nature, or
 - (ii) The management of money or assets received from a person exercising functions of a public nature.
- (2) The Commissioners may charge a fee for the provision of a valuation under subsection (1)(b) or (c).
- (3) In this section a reference to providing valuations of property includes a reference to advising about matters appearing to an officer of Revenue and Customs to be connected to the valuation of property.

Exercise of functions

11. Treasury directions

In the exercise of their functions the Commissioners shall comply with any directions of a general nature given to them by the Treasury.

12. Commissioners' arrangements

- (1) The Commissioners shall make arrangements for-
- (a) The conduct of their proceedings, and
 - (b) The conduct of the proceedings of any committee established by them.
- (2) Arrangements under subsection (1) may, in particular-
- (a) Make provision for a quorum at meetings;
 - (b) Provide that a function of the Commissioners-
 - (i) May be exercised by two Commissioners, or
 - (ii) May be exercised by a specified number of Commissioners (greater than two).
- (3) A decision to make arrangements under subsection (1) must be taken with the agreement of more than half of the Commissioners holding office at the time.

13. Exercise of Commissioners' functions by officers

- (1) An officer of Revenue and Customs may exercise any function of the Commissioners.
- (2) But subsection (1)-
- (a) Does not apply to the functions specified in subsection (3), and
 - (b) Is subject to directions under section 2(3) and arrangements under section 12.
- (3) The non-delegable functions mentioned in subsection (2)(a) are-
- (a) Making, by statutory instrument, regulations, rules or an order.
 - (b) Approving an application for a warrant to search premises under section 20C of the Taxes Management Act 1970 (c. 9).

- (c) Approving an application for a warrant to enter premises under Part 7 of Schedule 13 to the Finance Act 2003 (c. 14), and
- (d) Giving instructions for the disclosure of information under section 20(1)(a), except that an officer of Revenue and Customs may give an instruction under section 20(1)(a) authorising disclosure of specified information relating to-
 - (i) One or more specified persons.
 - (ii) One or more specified transactions, or
 - (iii) Specified goods.

14. Delegation

- (1) Arrangements under section 12 may, in particular, enable the Commissioners, or a number of Commissioners acting in accordance with arrangements by virtue of section 12(2)(b), to delegate a function of the Commissioners, other than a function specified in subsection (2) below-
 - (a) To a single Commissioner.
 - (b) To a committee established by the Commissioners (which may include persons who are neither Commissioners nor staff of the Commissioners nor officers of Revenue and Customs), or
 - (c) To any other person.
- (2) The non-delegable functions mentioned in subsection (1) are-
 - (a) Making, by statutory instrument, regulations, rules or an order.
 - (b) Approving an application for a warrant to search premises under section 20C of the Taxes Management Act 1970 (c. 9), and
 - (c) Approving an application for a warrant to enter premises under Part 7 of Schedule 13 to the Finance Act 2003 (c. 14).
- (3) The Commissioners may not delegate the function under section 20(1)(a) except to a single Commissioner.
- (4) The delegation of a function by virtue of subsection (1) by the Commissioners or a number of Commissioners-
 - (a) Shall not prevent the exercise of the function by the Commissioners or those Commissioners, and
 - (b) Shall not, subject to express provision to the contrary in directions under section 2(3) or arrangements under section 12, prevent the exercise of the function by an officer of Revenue and Customs.
- (5) Where the Commissioners or a number of Commissioners delegate a function to a person by virtue of subsection (1)(c)-
 - (a) The Commissioners or those Commissioners shall monitor the exercise of the function by that person, and
 - (b) In the exercise of the function the delegate shall comply with any directions of the Commissioners or of those Commissioners.

15. Agency: Scotland and Northern Ireland

- (1) For the purposes of section 93 of the Scotland Act 1998 (c. 46) (agency)-
 - (a) The Commissioners shall be treated as a Minister of the Crown, and
 - (b) The officers of Revenue and Customs shall be treated as a Minister of the Crown.
- (2) For the purposes of section 28 of the Northern Ireland Act 1998 (c. 47) (agency)-
 - (a) The Commissioners shall be treated as a Minister of the Crown, and
 - (b) The officers of Revenue and Customs shall be treated as a Minister of the Crown.

16. Restrictions, &c.

Part 1 of Schedule 2 (which restricts, or makes other provision in connection with, the exercise of certain functions) shall have effect.



Information

17. Use of information

- (1) Information acquired by the Revenue and Customs in connection with a function may be used by them in connection with any other function.
- (2) Subsection (1) is subject to any provision which restricts or prohibits the use of information and which is contained in-
 - (a) This Act.
 - (b) Any other enactment, or
 - (c) An international or other agreement to which the United Kingdom or Her Majesty's Government is party.
- (3) In subsection (1) "the Revenue and Customs" means-
 - (a) The Commissioners.
 - (b) An officer of Revenue and Customs.
 - (c) A person acting on behalf of the Commissioners or an officer of Revenue and Customs.
 - (d) A committee established by the Commissioners.
 - (e) A member of a committee established by the Commissioners.
 - (f) The Commissioners of Inland Revenue (or any committee or staff of theirs or anyone acting on their behalf).
 - (g) The Commissioners of Customs and Excise (or any committee or staff of theirs or anyone acting on their behalf), and
 - (h) A person specified in section 6(2) or 7(3).
- (4) In subsection (1) "function" means a function of any of the persons listed in subsection (3).
- (5) In subsection (2) the reference to an enactment does not include-
 - (a) An Act of the Scottish Parliament or an instrument made under such an Act, or
 - (b) An Act of the Northern Ireland Assembly or an instrument made under such an Act.
- (6) Part 2 of Schedule 2 (which makes provision about the supply and other use of information in specified circumstances) shall have effect.

18. Confidentiality

- (1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.
- (2) But subsection (1) does not apply to a disclosure-
 - (a) which-
 - (i) Is made for the purposes of a function of the Revenue and Customs, and
 - (ii) Does not contravene any restriction imposed by the Commissioners.
 - (b) Which is made in accordance with section 20 or 21.
 - (c) Which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions.
 - (d) Which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions.
 - (e) Which is made in pursuance of an order of a court.
 - (f) Which is made to Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27.
 - (g) Which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or
 - (h) Which is made with the consent of each person to whom the information relates.

- (3) Subsection (1) is subject to any other enactment permitting disclosure.
- (4) In this section-
 - (a) A reference to Revenue and Customs officials is a reference to any person who is or was-
 - (i) A Commissioner,
 - (ii) An officer of Revenue and Customs,
 - (iii) A person acting on behalf of the Commissioners or an officer of Revenue and Customs, or
 - (iv) A member of a committee established by the Commissioners,
 - (b) A reference to the Revenue and Customs has the same meaning as in section 17,
 - (c) A reference to a function of the Revenue and Customs is a reference to a function of-
 - (i) The Commissioners, or
 - (ii) An officer of Revenue and Customs,
 - (d) A reference to the Scottish inspectors or the Northern Ireland inspectors has the same meaning as in section 27, and
 - (e) A reference to an enactment does not include-
 - (i) An Act of the Scottish Parliament or an instrument made under such an Act, or
 - (ii) An Act of the Northern Ireland Assembly or an instrument made under such an Act.

19. Wrongful disclosure

- (1) A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity-
 - (a) Is specified in the disclosure, or
 - (b) Can be deduced from it.
- (2) In subsection (1) "revenue and customs information relating to a person" means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others).
- (3) It is a defence for a person charged with an offence under this section of disclosing information to prove that he reasonably believed-
 - (a) That the disclosure was lawful, or
 - (b) That the information had already and lawfully been made available to the public.
- (4) A person guilty of an offence under this section shall be liable-
 - (a) On conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) On summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (5) A prosecution for an offence under this section may be instituted in England and Wales only-
 - (a) By the Director of Revenue and Customs Prosecutions, or
 - (b) With the consent of the Director of Public Prosecutions.
- (6) A prosecution for an offence under this section may be instituted in Northern Ireland only-
 - (a) By the Commissioners, or
 - (b) With the consent of the Director of Public Prosecutions for Northern Ireland.
- (7) In the application of this section to Scotland or Northern Ireland the reference in subsection (4)(b) to 12 months shall be taken as a reference to six months.
- (8) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of section 18(1) or 20(9) (whether or not this section applies to the contravention).

20. Public interest disclosure

- (1) Disclosure is in accordance with this section (as mentioned in section 18(2)(b)) if-
 - (a) It is made on the instructions of the Commissioners (which may be general or specific).
 - (b) It is of a kind-
 - (i) Which any of subsections (2) to (7) applies, or
 - (ii) Specified in regulations made by the Treasury, and
 - (c) The Commissioners are satisfied that it is in the public interest.
- (2) This subsection applies to a disclosure made-
 - (a) To a person exercising public functions (whether or not within the United Kingdom).
 - (b) For the purposes of the prevention or detection of crime, and
 - (c) In order to comply with an obligation of the United Kingdom, or Her Majesty's Government, under an international or other agreement relating to the movement of persons, goods or services.
- (3) This subsection applies to a disclosure if-
 - (a) It is made to a body which has responsibility for the regulation of a profession.
 - (b) It relates to misconduct on the part of a member of the profession, and
 - (c) The misconduct relates to a function of the Revenue and Customs.
- (4) This subsection applies to a disclosure if-
 - (a) It is made to a constable, and
 - (b) Either-
 - (i) The constable is exercising functions which relate to the movement of persons or goods into or out of the United Kingdom, or
 - (ii) The disclosure is made for the purposes of the prevention or detection of crime.
- (5) This subsection applies to a disclosure if it is made-
 - (a) To the National Criminal Intelligence Service, and
 - (b) For a purpose connected with its functions under section 2(2) of the Police Act 1997 (c. 50) (criminal intelligence).
- (6) This subsection applies to a disclosure if it is made-
 - (a) To a person exercising public functions in relation to public safety or public health, and
 - (b) For the purposes of those functions.
- (7) This subsection applies to a disclosure if it-
 - (a) Is made to the Police Information Technology Organisation for the purpose of enabling information to be entered in a computerised database, and
 - (b) Relates to-
 - (i) A person suspected of an offence.
 - (ii) A person arrested for an offence.
 - (iii) The results of an investigation, or
 - (iv) Anything seized.
- (8) Regulations under subsection (1)(b)(ii)-
 - (a) May specify a kind of disclosure only if the Treasury are satisfied that it relates to-
 - (i) National security.
 - (ii) Public safety.
 - (iii) Public health, or
 - (iv) The prevention or detection of crime.
 - (b) May make provision limiting or restricting the disclosures that may be made in reliance on the regulations; and that provision may, in particular, operate by reference to-

- (i) The nature of information.
 - (ii) The person or class of person to whom the disclosure is made.
 - (iii) The person or class of person by whom the disclosure is made.
 - (iv) Any other factor, or
 - (v) A combination of factors.
- (c) Shall be made by statutory instrument.
- (d) May not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (9) Information disclosed in reliance on this section may not be further disclosed without the consent of the Commissioners (which may be general or specific); (but the Commissioners shall be taken to have consented to further disclosure by use of the computerised database of information disclosed by virtue of subsection (7)).

21. Disclosure to prosecuting authority

- (1) Disclosure is in accordance with this section (as mentioned in section 18(2)(b)) if made-
- (a) To a prosecuting authority, and
 - (b) For the purpose of enabling the authority-
 - (i) To consider whether to institute criminal proceedings in respect of a matter considered in the course of an investigation conducted by or on behalf of Her Majesty's Revenue and Customs, or
 - (ii) To give advice in connection with a criminal investigation (within the meaning of section 35(5)(b)) or criminal proceedings.
- (2) In subsection (1) "prosecuting authority" means-
- (a) The Director of Revenue and Customs Prosecutions.
 - (b) In Scotland, the Lord Advocate or a procurator fiscal, and
 - (c) In Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (3) Information disclosed to a prosecuting authority in accordance with this section may not be further disclosed except-
- (a) For a purpose connected with the exercise of the prosecuting authority's functions, or
 - (b) With the consent of the Commissioners (which may be general or specific).
- (4) A person commits an offence if he contravenes subsection (3).
- (5) It is a defence for a person charged with an offence under this section to prove that he reasonably believed-
- (a) That the disclosure was lawful, or
 - (b) That the information had already and lawfully been made available to the public.
- (6) A person guilty of an offence under this section shall be liable-
- (a) On conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) On summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (7) A prosecution for an offence under this section may be instituted in England and Wales only-
- (a) By the Director of Revenue and Customs Prosecutions, or
 - (b) With the consent of the Director of Public Prosecutions.
- (8) A prosecution for an offence under this section may be instituted in Northern Ireland only-
- (a) By the Commissioners, or
 - (b) With the consent of the Director of Public Prosecutions for Northern Ireland.
- (9) In the application of this section to Scotland or Northern Ireland the reference in subsection (6)(b) to 12 months shall be taken as a reference to six months.

22. Data protection, &c.

Nothing in sections 17 to 21 authorises the making of a disclosure which-

- (a) Contravenes the Data Protection Act 1998 (c. 29), or
- (b) Is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).

23. Freedom of information

- (1) Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (c. 36) (prohibitions on disclosure) if its disclosure-
 - (a) Would specify the identity of the person to whom the information relates, or
 - (b) Would enable the identity of such a person to be deduced.
- (2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.
- (3) In subsection (1) "revenue and customs information relating to a person" has the same meaning as in section 19.

Proceedings

24. Evidence

- (1) A document that purports to have been issued or signed by or with the authority of the Commissioners-
 - (a) Shall be treated as having been so issued or signed unless the contrary is proved, and
 - (b) Shall be admissible in any legal proceedings.
- (2) A document that purports to have been issued by the Commissioners and which certifies any of the matters specified in subsection (3) shall (in addition to the matters provided for by subsection (1)(a) and (b)) be treated as accurate unless the contrary is proved.
- (3) The matters mentioned in subsection (2) are-
 - (a) That a specified person was appointed as a commissioner on a specified date.
 - (b) That a specified person was appointed as an officer of Revenue and Customs on a specified date.
 - (c) That at a specified time or for a specified purpose (or both) a function was delegated to a specified Commissioner.
 - (d) That at a specified time or for a specified purpose (or both) a function was delegated to a specified committee, and
 - (e) That at a specified time or for a specified purpose (or both) a function was delegated to another specified person.
- (4) A photographic or other copy of a document acquired by the Commissioners shall, if certified by them to be an accurate copy, be admissible in any legal proceedings to the same extent as the document itself.
- (5) Section 2 of the Documentary Evidence Act 1868 (c. 37) (proof of documents) shall apply to a Revenue and Customs document as it applies in relation to the documents mentioned in that section.
- (6) In the application of that section to a Revenue and Customs document the Schedule to that Act shall be treated as if-
 - (a) The first column contained a reference to the Commissioners, and
 - (b) The second column contained a reference to a Commissioner or a person acting on his authority.
- (7) In this section-
 - (a) "Revenue and Customs document" means a document issued by or on behalf of the Commissioners, and
 - (b) A reference to the Commissioners includes a reference to the Commissioners of Inland Revenue and to the Commissioners of Customs and Excise.

25. Conduct of civil proceedings

- (1) An officer of Revenue and Customs or a person authorised by the Commissioners may conduct civil proceedings, in a magistrates' court or in the sheriff court, relating to a function of the Revenue and Customs.
- (2) A solicitor member of the Commissioners' staff may act as a solicitor in connection with civil proceedings relating to a function of the Revenue and Customs.
- (3) A legally qualified member of the Commissioners' staff may conduct county court proceedings relating to a matter specified in section 7.
- (4) A court shall grant any rights of audience necessary to enable a person to exercise a function under this section.
- (5) In this section-
 - (a) A reference to a function of the Revenue and Customs is a reference to a function of-
 - (i) The Commissioners, or
 - (ii) An officer of Revenue and Customs.
 - (b) A reference to civil proceedings is a reference to proceedings other than proceedings in respect of an offence.
 - (c) A reference to county court proceedings is a reference to civil proceedings in a county court.
 - (d) The reference to a legally qualified member of the Commissioners' staff is a reference to a member of staff who has been admitted as a solicitor, or called to the Bar, whether or not he holds a practising certificate, and
 - (e) The reference to a solicitor member of the Commissioners' staff-
 - (i) Except in relation to Scotland, is a reference to a member of staff who has been admitted as a solicitor, whether or not he holds a practising certificate.
 - (ii) In relation to Scotland, is a reference to a member of staff who has been admitted as a solicitor and who holds a practising certificate.

26. Rewards

The Commissioners may pay a reward to a person in return for a service which relates to a function of-

- (a) The Commissioners, or
- (b) An officer of Revenue and Customs.

Inspection and complaints

27. Inspection

- (1) The Treasury may make regulations conferring functions on Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors in relation to-
 - (a) The Commissioners for Her Majesty's Revenue and Customs, and
 - (b) Officers of Revenue and Customs.
- (2) Regulations under subsection (1)-
 - (a) May-
 - (i) In relation to Her Majesty's Inspectors of Constabulary, apply (with or without modification) or make provision similar to any provision of sections 54 to 56 of the Police Act 1996 (c. 16) (inspection).
 - (ii) In relation to the Scottish inspectors, apply (with or without modification) or make provision similar to any provision of section 33 or 34 of the Police (Scotland) Act 1967 (c. 77) (inspection).
 - (iii) In relation to the Northern Ireland inspectors, apply (with or without modification) or make provision similar to any provision of section 41 or 42 of the Police (Northern Ireland) Act 1998 (c. 32) (inspection).
 - (b) May enable a Minister of the Crown or the Commissioners to require an inspection to be carried out.

- (c) Shall provide for a report of an inspection to be made and, subject to any exceptions required or permitted by the regulations, published.
- (d) Shall provide for an annual report by Her Majesty's Inspectors of Constabulary.
- (e) May make provision for payment by the Commissioners to or in respect of Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors.
- (3) An inspection carried out by virtue of this section may not address a matter of a kind which the Comptroller and Auditor General may examine under section 6 of the National Audit Act 1983 (c. 44).
- (4) An inspection carried out by virtue of this section shall be carried out jointly by Her Majesty's Inspectors of Constabulary and the Scottish inspectors-
 - (a) If it is carried out wholly in Scotland, or
 - (b) In a case where it is carried out partly in Scotland, to the extent that it is carried out there.
- (5) Regulations under subsection (1)-
 - (a) Shall be made by statutory instrument, and
 - (b) Shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section-
 - (a) "The Scottish inspectors" means the inspectors of constabulary appointed under section 33 (1) of the Police (Scotland) Act 1967, and
 - (b) "The Northern Ireland inspectors" means the inspectors of constabulary appointed under section 41(1) of the Police (Northern Ireland) Act 1998.

28. Complaints and misconduct: England and Wales

- (1) The Treasury may make regulations conferring functions on the Independent Police Complaints Commission in relation to-
 - (a) The Commissioners for Her Majesty's Revenue and Customs, and
 - (b) Officers of Revenue and Customs.
- (2) Regulations under subsection (1)-
 - (a) May apply (with or without modification) or make provision similar to any provision of or made under Part 2 of the Police Reform Act 2002 (c. 30) (complaints).
 - (b) May confer on the Independent Police Complaints Commission, or on a person acting on its behalf, a power of a kind conferred by this Act or another enactment on an officer of Revenue and Customs.
 - (c) May make provision for payment by the Commissioners to or in respect of the Independent Police Complaints Commission.
- (3) The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may disclose information to each other for the purposes of the exercise of a function-
 - (a) By virtue of this section, or
 - (b) Under the Parliamentary Commissioner Act 1967 (c. 13).
- (4) The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may jointly investigate a matter in relation to which-
 - (a) The Independent Police Complaints Commission has functions by virtue of this section, and
 - (b) The Parliamentary Commissioner for Administration has functions by virtue of the Parliamentary Commissioner Act 1967.
- (5) Regulations under subsection (1)-
 - (a) Shall be made by statutory instrument, and
 - (b) Shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Regulations under subsection (1) shall relate to the Commissioners or officers of Revenue and Customs only in so far as their functions are exercised in or in relation to England and Wales.

29. Confidentiality, &c.

- (1) Where Her Majesty's Inspectors of Constabulary, the Scottish inspectors or the Northern Ireland inspectors obtain information in the course of exercising a function by virtue of section 27-
 - (a) They may not disclose it without the consent of the Commissioners, and
 - (b) They may not use it for any purpose other than the exercise of the function by virtue of section 27.
- (2) A report of an inspection by virtue of section 27 may not include information relating to a specified person without his consent.
- (3) Where the Independent Police Complaints Commission or a person acting on its behalf obtains information from the Commissioners or an officer of Revenue and Customs, or from the Parliamentary Commissioner for Administration, in the course of exercising a function by virtue of section 28-
 - (a) The Commission or person shall comply with any restriction on disclosure imposed by regulations under that section (and those regulations may, in particular, prohibit disclosure generally or only in specified circumstances or only without the consent of the Commissioners), and
 - (b) The Commission or person may not use the information for any purpose other than the exercise of the function by virtue of that section.
- (4) A person commits an offence if he contravenes a provision of this section.
- (5) It is a defence for a person charged with an offence under this section of disclosing or using information to prove that he reasonably believed-
 - (a) That the disclosure or use was lawful, or
 - (b) That the information had already and lawfully been made available to the public.
- (6) A person guilty of an offence under this section shall be liable-
 - (a) On conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) On summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (7) A prosecution for an offence under this section may be instituted in England and Wales only-
 - (a) By the Director of Revenue and Customs Prosecutions, or
 - (b) With the consent of the Director of Public Prosecutions.
- (8) A prosecution for an offence under this section may be instituted in Northern Ireland only-
 - (a) By the Commissioners, or
 - (b) With the consent of the Director of Public Prosecutions for Northern Ireland.
- (9) In the application of this section to Scotland or Northern Ireland the reference in subsection (6)(b) to 12 months shall be taken as a reference to six months.
- (10) In this section a reference to the Scottish inspectors or the Northern Ireland inspectors has the same meaning as in section 27.

Offences

30. Impersonation

- (1) A person commits an offence if he pretends to be a Commissioner or an officer of Revenue and Customs with a view to obtaining-
 - (a) Admission to premises.
 - (b) Information, or
 - (c) Any other benefit.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to-
 - (a) Imprisonment for a period not exceeding 51 weeks.
 - (b) A fine not exceeding level 5 on the standard scale, or
 - (c) Both.



- (3) In the application of this section to Scotland or Northern Ireland the reference in subsection (2)(a) to 51 weeks shall be taken as a reference to six months.

31. Obstruction

- (1) A person commits an offence if without reasonable excuse he obstructs-
 - (a) An officer of Revenue and Customs.
 - (b) A person acting on behalf of the Commissioners or an officer of Revenue and Customs, or
 - (c) A person assisting an officer of Revenue and Customs.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to-
 - (a) Imprisonment for a period not exceeding 51 weeks.
 - (b) A fine not exceeding level 3 on the standard scale, or
 - (c) Both.
- (3) In the application of this section to Scotland or Northern Ireland the reference in subsection (2)(a) to 51 weeks shall be taken as a reference to six months.

32. Assault

- (1) A person commits an offence if he assaults an officer of Revenue and Customs.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to-
 - (a) Imprisonment for a period not exceeding 51 weeks.
 - (b) A fine not exceeding level 5 on the standard scale, or
 - (c) Both.
- (3) In the application of this section to Scotland or Northern Ireland the reference in subsection (2)(a) to 51 weeks shall be taken as a reference to six months.

33. Power of arrest

- (1) An authorised officer of Revenue and Customs may arrest a person without warrant if the officer reasonably suspects that the person-
 - (a) Has committed an offence under section 30, 31 or 32.
 - (b) Is committing an offence under any of those sections, or
 - (c) Is about to commit an offence under any of those sections.
- (2) In subsection (1) "authorised" means authorised by the Commissioners.
- (3) Authorisation for the purposes of this section may be specific or general.
- (4) In Scotland or Northern Ireland, a constable may arrest a person without warrant if the constable reasonably suspects that the person-
 - (a) Has committed an offence under this Act.
 - (b) Is committing an offence under this Act, or
 - (c) Is about to commit an offence under this Act.

Prosecutions

34. The Revenue and Customs Prosecutions Office

- (1) The Attorney General shall appoint an individual as Director of Revenue and Customs Prosecutions.
- (2) The Director may, with the approval of the Minister for the Civil Service as to terms and conditions of service, appoint staff.
- (3) The Director and his staff may together be referred to as the Revenue and Customs Prosecutions Office.
- (4) Schedule 3 (which makes provision about the Office) shall have effect.

35. Functions

- (1) The Director-

- (a) May institute and conduct criminal proceedings in England and Wales relating to a criminal investigation by the Revenue and Customs, and
 - (b) Shall take over the conduct of criminal proceedings instituted in England and Wales by the Revenue and Customs.
- (2) The Director shall provide such advice as he thinks appropriate, to such persons as he thinks appropriate, in relation to-
- (a) A criminal investigation by the Revenue and Customs, or
 - (b) Criminal proceedings instituted in England and Wales relating to a criminal investigation by the Revenue and Customs.
- (3) In this section a reference to the Revenue and Customs is a reference to-
- (a) The Commissioners.
 - (b) An officer of Revenue and Customs, and
 - (c) A person acting on behalf of the Commissioners or an officer of Revenue and Customs.
- (4) The Attorney General may by order assign to the Director a function of-
- (a) Instituting criminal proceedings.
 - (b) Assuming the conduct of criminal proceedings, or
 - (c) Providing legal advice.
- (5) In this section-
- (a) A reference to the institution of criminal proceedings shall be construed in accordance with section 15(2) of the Prosecution of Offences Act 1985 (c. 23), and
 - (b) "Criminal investigation" means any process-
 - (i) For considering whether an offence has been committed.
 - (ii) For discovering by whom an offence has been committed, or
 - (iii) As a result of which an offence is alleged to have been committed.

36. Functions: supplemental

- (1) The Director shall discharge his functions under the superintendence of the Attorney General.
- (2) The Director or an individual designated under section 37 or 39 or appointed under section 38 must have regard to the Code for Crown Prosecutors issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985 (c. 23)-
 - (a) In determining whether proceedings for an offence should be instituted.
 - (b) In determining what charges should be preferred.
 - (c) In considering what representations to make to a magistrates' court about mode of trial, and
 - (d) In determining whether to discontinue proceedings.
- (3) Sections 23 and 23A of the Prosecution of Offences Act 1985 (power to discontinue proceedings) shall apply (with any necessary modifications) to proceedings conducted by the Director under this Act as they apply to proceedings conducted by the Director of Public Prosecutions.
- (4) A power of the Director under an enactment to institute proceedings may be exercised to institute proceedings in England and Wales only.

37. Prosecutors

- (1) The Director may designate a member of the Office (to be known as a "Revenue and Customs Prosecutor") to exercise any function of the Director under or by virtue of section 35.
- (2) An individual may be designated as a Prosecutor only if he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41) (qualification for judicial appointments).
- (3) A Prosecutor shall act in accordance with any instructions of the Director.

38. Conduct of prosecutions on behalf of the Office

- (1) An individual who is not a member of the Office may be appointed by the Director to exercise any function of the Director under or by virtue of section 35 in relation to-
 - (a) Specified criminal proceedings, or
 - (b) A specified class or description of criminal proceedings.
- (2) An individual may be appointed under this section only if he has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (qualifications for judicial appointments).
- (3) An individual appointed under this section shall act in accordance with any instructions of-
 - (a) The Director, or
 - (b) A Prosecutor.

39. Designation of non-legal staff

- (1) The Director may designate a member of the Office-
 - (a) To conduct summary bail applications, and
 - (b) To conduct other ancillary magistrates' criminal proceedings.
- (2) In carrying out a function for which he is designated under this section an individual shall have the same powers and rights of audience as a Prosecutor.
- (3) In subsection (1)-
 - (a) "Summary bail application" means an application for bail made in connection with an offence-
 - (i) Which is not triable only on indictment, and
 - (ii) In respect of which the accused has not been sent to the Crown Court for trial, and
 - (b) "Ancillary magistrates' criminal proceedings" means criminal proceedings other than trials in a magistrates' court.
- (4) An individual designated under this section shall act in accordance with any instructions of-
 - (a) The Director, or
 - (b) A Prosecutor.

40. Confidentiality

- (1) The Revenue and Customs Prosecutions Office may not disclose information which-
 - (a) Is held by the Prosecutions Office in connection with any of its functions, and
 - (b) Relates to a person whose identity is specified in the disclosure or can be deduced from it.
- (2) But subsection (1)-
 - (a) Does not apply to a disclosure which-
 - (i) Is made for the purposes of a function of the Prosecutions Office, and
 - (ii) Does not contravene any restriction imposed by the Director.
 - (b) Does not apply to a disclosure made to Her Majesty's Revenue and Customs in connection with a function of the Revenue and Customs (within the meaning of section 25).
 - (c) Does not apply to a disclosure made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom).
 - (d) Does not apply to a disclosure which in the opinion of the Director is desirable for the purpose of safeguarding national security.
 - (e) Does not apply to a disclosure made in pursuance of an order of a court.
 - (f) Does not apply to a disclosure made with the consent of each person to whom the information relates, and
 - (g) Is subject to any other enactment.
- (3) A person commits an offence if he contravenes subsection (1).
- (4) Subsection (3) does not apply to the disclosure of information about internal administrative arrangements of the Revenue and Customs Prosecutions Office (whether relating to a member of the Office or to another person).

- (5) It is a defence for a person charged with an offence under this section of disclosing information to prove that he reasonably believed-
 - (a) That the disclosure was lawful, or
 - (b) That the information had already and lawfully been made available to the public.
- (6) In this section a reference to the Revenue and Customs Prosecutions Office includes a reference to-
 - (a) Former members of the Office, and
 - (b) Persons who hold or have held appointment under section 38.
- (7) A person guilty of an offence under this section shall be liable-
 - (a) On conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) On summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (8) A prosecution for an offence under this section may be instituted in England and Wales only-
 - (a) By the Director of Revenue and Customs Prosecutions, or
 - (b) With the consent of the Director of Public Prosecutions.
- (9) A prosecution for an offence under this section may be instituted in Northern Ireland only-
 - (a) By the Commissioners, or
 - (b) With the consent of the Director of Public Prosecutions for Northern Ireland.
- (10) In the application of this section to Scotland or Northern Ireland the reference in subsection (7)(b) to 12 months shall be taken as a reference to six months.
- (11) In subsection (2) the reference to an enactment does not include-
 - (a) An Act of the Scottish Parliament or an instrument made under such an Act, or
 - (b) An Act of the Northern Ireland Assembly or an instrument made under such an Act.

41. Disclosure of information to Director of Revenue and Customs Prosecutions

- (1) A person specified in subsection (2) may disclose information held by him to the Director for a purpose connected with a specified investigation or prosecution.
- (2) Those persons are-
 - (a) A constable.
 - (b) The Director General of the National Criminal Intelligence Service.
 - (c) The Director General of the National Crime Squad.
 - (d) The Director of the Serious Fraud Office.
 - (e) The Director General of the Serious Organised Crime Agency.
 - (f) The Director of Public Prosecutions.
 - (g) The Director of Public Prosecutions for Northern Ireland, and
 - (h) Such other persons as the Attorney General may specify by order.
- (3) An order under subsection (2)(h)-
 - (a) May specify a person only if, or in so far as, he appears to the Attorney General to be exercising public functions,
 - (b) May include transitional or incidental provision.
 - (c) Shall be made by statutory instrument, and
 - (d) Shall not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (4) In relation to a person if or in so far as he exercises functions in respect of Northern Ireland subsections (2)(h) and (3)(a) shall have effect as if a reference to the Attorney General were a reference to-
 - (a) The Advocate General for Northern Ireland, or



- (b) Before the commencement of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the Attorney General for Northern Ireland.
- (5) In the application of this section to Scotland, references to the Attorney General are to be read as references to a Minister of the Crown (including the Treasury).
- (6) Nothing in this section authorises the making of a disclosure which-
 - (a) Contravenes the Data Protection Act 1998 (c. 29), or
 - (b) Is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).

42. Inspection

Section 2 of the Crown Prosecution Service Inspectorate Act 2000 (c. 10) shall apply to the Revenue and Customs Prosecutions Office as it applies to the Crown Prosecution Service.

Money and property

43. Expenditure

Expenditure of the Commissioners in connection with the exercise of their functions shall be paid out of money provided by Parliament.

44. Payment into Consolidated Fund

- (1) The Commissioners shall pay money received in the exercise of their functions into the Consolidated Fund-
 - (a) At such times and in such manner as the Treasury directs.
 - (b) With the exception of receipts specified in subsection (2), and
 - (c) After deduction of the disbursements specified in subsection (3).
- (2) The exceptions mentioned in subsection (1)(b) are-
 - (a) Contributions under Part I of the Social Security Contributions and Benefits Act 1992 (c. 4).
 - (b) Contributions under Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
 - (c) Any other sums payable, under or by virtue of an enactment, into the National Insurance Fund or the Northern Ireland National Insurance Fund.
 - (d) Sums required under or by virtue of an enactment to be paid into the National Loans Fund.
 - (e) Sums required to be paid to a Minister of the Crown by virtue of an enactment relating to financial support for students.
 - (f) Penalties under section 21 of the National Minimum Wage Act 1998 (c. 39) (non-compliance), and
 - (g) Sums required under or by virtue of an enactment to be paid into the Scottish Consolidated Fund.
- (3) The disbursements mentioned in subsection (1)(c) are-
 - (a) Payments in connection with drawback, repayments and discounts.
 - (b) Payments under section 77 of the Scotland Act 1998 (c. 46) (additional tax).
 - (c) Payments under section 2 of the Isle of Man Act 1979 (c. 58) (Isle of Man share of common duties), and
 - (d) Tax credits.
- (4) In subsection (3)(a) "repayments" includes-
 - (a) Payments in respect of actual or deemed credits relating to any tax or duty, and
 - (b) Payments of interest (or repayment supplement) on-
 - (i) Repayments, or
 - (ii) Payments treated as repayments.

45. Remuneration, &c.

- (1) The Commissioners shall be paid, out of money provided by Parliament, such remuneration, expenses and other allowances as may be determined by the Minister for the Civil Service.

- (2) The Commissioners may incur expenditure in respect of staff (whether in respect of remuneration, allowances, pensions, gratuities or otherwise).
- (3) The Commissioners shall pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to this Act in the sums payable under the Superannuation Act 1972 (c. 11) out of money provided by Parliament.

46. Accounts

- (1) The Commissioners shall provide to the Comptroller and Auditor General, in such form as the Treasury shall direct, a daily account of-
 - (a) The amount of revenue received, and
 - (b) The disposal of revenue received.
- (2) The Commissioners shall provide to the Comptroller and Auditor General, in such form and at such times as the Treasury shall direct, an account of liabilities satisfied by the acceptance of property in satisfaction of tax under-
 - (a) Section 230 of the Inheritance Tax Act 1984 (c. 51), or
 - (b) Any other enactment.

47. Payment out of Consolidated Fund

- (1) This section applies if the Treasury think that the funds available to the Commissioners may be insufficient to make, under or by virtue of an enactment-
 - (a) A payment into the National Insurance Fund.
 - (b) A payment into the Northern Ireland National Insurance Fund.
 - (c) A payment of a kind specified in section 44(2)(c) to (g), or
 - (d) A disbursement of a kind specified in section 44(3).
- (2) Where this section applies the Treasury may pay money to the Commissioners out of the Consolidated Fund to enable them to make a payment or disbursement.
- (3) This section applies whether or not the reason for a deficiency is or may be that an amount has been paid or retained on the basis of an estimate that has proved or may prove to be inaccurate.

48. Transfer of property, &c: general

- (1) Upon commencement the property, rights and liabilities of any of the old commissioners shall by virtue of this section vest in the new commissioners.
- (2) Anything done by, on behalf of or in relation to any of the old commissioners which has effect immediately before commencement shall continue to have effect as if done by, on behalf of or in relation to the new commissioners.
- (3) Anything (including any legal proceedings) which immediately before commencement is in the process of being done by, on behalf of or in relation to any of the old commissioners may be continued by, on behalf of or in relation to the new commissioners.
- (4) Upon commencement the property, rights and liabilities of any of the old officers shall by virtue of this section vest in the officers of Revenue and Customs.
- (5) Anything done by, on behalf of or in relation to any of the old officers which has effect immediately before commencement shall continue to have effect as if done by, on behalf of or in relation to an officer of Revenue and Customs.
- (6) Anything (including any legal proceedings) which immediately before commencement is in the process of being done by, on behalf of or in relation to any of the old officers may be continued by, on behalf of or in relation to an officer of Revenue and Customs.
- (7) So far as is necessary or appropriate in consequence of section 5 or the preceding provisions of this section, on and after commencement-
 - (a) A reference to any of the old commissioners in an agreement (whether written or not), instrument or other document shall be treated as a reference to the new commissioners, and
 - (b) A reference in an agreement (whether written or not), instrument or other document to any of the old officers shall be treated as a reference to an officer of Revenue and Customs.



- (8) This section shall operate in relation to property, rights or liabilities-
 - (a) Whether or not they would otherwise be capable of being transferred.
 - (b) Without any instrument or other formality being required, and
 - (c) Irrespective of any requirement for consent that would otherwise apply.
- (9) In this section-

"Commencement" means the time appointed under section 53 for the commencement of section 5.

"Rights and liabilities" includes rights and liabilities relating to employment.

"The old commissioners" means-

 - (a) The Commissioners of Inland Revenue, and
 - (b) The Commissioners of Customs and Excise,

"The old officers" means any of the persons listed in section 6(2) or 7(3), and

"The new commissioners" means the Commissioners for Her Majesty's Revenue and Customs.
- (10) This section is subject to section 49.

49. Transfer of property, &c: Prosecutions Office

- (1) The Treasury may make a scheme identifying property, rights and liabilities of the old commissioners which shall on commencement vest not in the new commissioners but in the Director of Revenue and Customs Prosecutions.
- (2) A scheme shall have effect-
 - (a) In so far as it excludes anything from the operation of section 48, on the coming into force of that section, and
 - (b) In so far as it vests anything in the Director of Revenue and Customs Prosecutions, upon the coming into force of section 35.
- (3) A scheme may include consequential and incidental provision and may, in particular-
 - (a) Apply (with or without modification) or make provision similar to any provision of section 48.
 - (b) Modify the effect of section 48(2), (3), (5), (6) or (7).
 - (c) Make provision for shared ownership, use or access.
- (4) The Treasury may require the new commissioners to transfer specified property, rights and liabilities to the Director of Revenue and Customs Prosecutions (and the commissioners shall comply).
- (5) In relation to any matter that becomes a function of the Director of Revenue and Customs Prosecutions under section 35, section 48(2), (3), (5), (6) and (7) shall have effect with-
 - (a) the substitution of a reference to the Director for any reference to the new commissioners or to an officer of Revenue and Customs (or officers of Revenue and Customs), and
 - (b) the substitution of a reference to this section and anything done under it for a reference to section 48.
- (6) In this section the following expressions have the same meaning as in section 48-
 - (a) "commencement".
 - (b) "the old commissioners", and
 - (c) "the new commissioners".

General

50. Consequential amendments, &c.

- (1) In so far as is appropriate in consequence of section 5 a reference in an enactment, instrument or other document to the Commissioners of Customs and Excise, to customs and excise or to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (2) In so far as is appropriate in consequence of sections 6 and 7 a reference in an enactment, instrument or other document to any of the persons specified in section 6(2) or 7(3) (however expressed) shall be taken as a reference to an officer of Revenue and Customs.

- (3) In so far as is appropriate in consequence of this Act a reference in an enactment, instrument or other document to the Valuation Office of the Inland Revenue (however expressed) shall be taken as a reference to the Valuation Office of Her Majesty's Revenue and Customs.
- (4) The Treasury may by regulations make such provision as they think appropriate in consequence of section 5, 6 or 7 in respect of a reference in an enactment (however expressed) to-
 - (a) The Commissioners of Inland Revenue (or to a Commissioner).
 - (b) The Commissioners of Customs and Excise (or to a Commissioner).
 - (c) Customs.
 - (d) Customs and excise.
 - (e) Inland Revenue, or
 - (f) Any of the persons specified in section 6(2) or 7(3).
- (5) Regulations under subsection (4) in respect of a reference in an enactment-
 - (a) May amend an enactment.
 - (b) May make incidental and consequential provision.
 - (c) Shall be made by statutory instrument, and
 - (d) Shall not be made unless a draft has first been laid before, and approved by resolution of, each House of Parliament.
- (6) Schedule 4 (consequential amendments, &c.) shall have effect (and is without prejudice to the generality of subsections (1) to (4)).
- (7) Subsections (1) to (4) shall, subject to any express provision to the contrary, have effect in relation to enactments passed or made, and instruments and documents issued, whether before or after the passing of this Act.

51. Interpretation

- (1) In this Act-

Except where otherwise expressly provided, "enactment" includes-

 - (a) An Act of the Scottish Parliament.
 - (b) An instrument made under an Act of the Scottish Parliament.
 - (c) Northern Ireland legislation, and
 - (d) An instrument made under Northern Ireland legislation.

"Officer of Revenue and Customs" means a person appointed under section 2, and "Revenue" has the meaning given by section 5(4).
- (2) In this Act-
 - (a) "Function" means any power or duty (including a power or duty that is ancillary to another power or duty), and
 - (b) A reference to the functions of the Commissioners or of officers of Revenue and Customs is a reference to the functions conferred-
 - (i) By or by virtue of this Act, or
 - (ii) By or by virtue of any enactment passed or made after the commencement of this Act.
- (3) A reference in this Act, in an enactment amended by this Act or, subject to express provision to the contrary, in any future enactment, to responsibility for collection and management of revenue has the same meaning as references to responsibility for care and management of revenue in enactments passed before this Act.
- (4) In this Act a reference to information acquired in connection with a matter includes a reference to information held in connection with that matter.

52. Repeals

- (1) The following shall cease to have effect-
 - (a) the following provisions of the Customs and Excise Management Act 1979 (c. 2)-

- (i) Section 12 (inquiries).
 - (ii) Section 15 (bribery and collusion).
 - (iii) Section 32 (kidnapping officers).
 - (iv) Section 84 (signalling to smugglers).
 - (v) Section 86 (higher penalty where offender armed, &c.).
 - (vi) Section 152(c) (mitigation and remission of penalties, &c.).
 - (vii) Section 152(d) (early discharge from prison), and
 - (viii) Section 169 (false scales, &c.), and
- (b) Section 111(2) of the Taxes Management Act 1970 (c. 9) (valuation: obstruction).
- (2) The enactments specified in Schedule 5 are hereby repealed to the extent specified.

53. Commencement

- (1) This Act shall come into force in accordance with provision made by order of the Treasury.
- (2) An order under subsection (1)-
 - (a) May make provision generally or only in relation to specified provisions or purposes.
 - (b) May include transitional, consequential or incidental provision or savings, and
 - (c) Shall be made by statutory instrument.

54. Transitional: general

- (1) In the application of section 5-
 - (a) A reference to responsibility before commencement of that section includes a reference to responsibility under an enactment passed or made, but not yet in force, before commencement, and
 - (b) A reference to a function vesting includes a reference to a function which is to vest under an enactment passed or made, but not yet in force, before commencement of that section.
- (2) In the application of section 6 or 7 a reference to a function conferred by an enactment includes a reference to a function conferred by an enactment passed or made, but not yet in force, before commencement of that section.
- (3) Where immediately before the commencement of section 6 a person holds appointment as a member of the staff of the Commissioners of Inland Revenue or of the Commissioners of Customs and Excise, his appointment shall have effect on commencement as if made by the Commissioners for Her Majesty's Revenue and Customs under section 2.
- (4) The following shall be treated as being included in the list in Schedule 1-
 - (a) Development land tax.
 - (b) Disabled person's tax credit.
 - (c) Estate duty.
 - (d) The national defence contribution under Part III of the Finance Act 1937 (c. 54).
 - (e) The special tax on banking deposits under section 134 of the Finance Act 1981 (c. 35), and
 - (f) Working families tax credit.
- (5) The Treasury may by order made by statutory instrument add to the list in subsection (4) an item relating to a matter for which the Commissioners of Inland Revenue or a person listed in section 7(3) had responsibility before the commencement of section 5, if it appears to the Treasury that the law relating to that matter has lapsed or ceased to have effect but that transitional matters may continue to arise in respect of it.
- (6) An order under subsection (5)-
 - (a) May include consequential, transitional or incidental provision.
 - (b) Shall be made by statutory instrument, and
 - (c) Shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (7) A reference in this Act to anything done by, on behalf of or in relation to a specified person or class of person includes a reference to anything treated as if done by, on behalf of or in relation to that person by virtue of transitional provision of an enactment passed or made before this Act.

55. Transitional: penalties

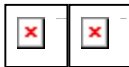
- (1) In relation to an offence under section 19 committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences) the reference in section 19(4)(b) to 12 months shall have effect as if it were a reference to six months.
- (2) In relation to an offence under section 21 committed before the commencement of section 282 of the Criminal Justice Act (short sentences), the reference in section 21(6)(b) to 12 months shall have effect as if it were a reference to six months.
- (3) In relation to an offence under section 29 committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences) the reference in section 29(6)(b) to 12 months shall have effect as if it were a reference to six months.
- (4) In relation to an offence under section 30 committed before the commencement of section 281(4) and (5) of the Criminal Justice Act 2003 (51 week maximum term of sentences) the reference in section 30(2)(a) to 51 weeks shall have effect as if it were a reference to six months.
- (5) In relation to an offence under section 31 committed before the commencement of section 281(4) and (5) of the Criminal Justice Act 2003 (51 week maximum term of sentences) the reference in section 31(2)(a) to 51 weeks shall have effect as if it were a reference to one month.
- (6) In relation to an offence under section 32 committed before the commencement of section 281(4) and (5) of the Criminal Justice Act 2003 (51 week maximum term of sentences) the reference in section 32(2)(a) to 51 weeks shall have effect as if it were a reference to six months.
- (7) In relation to an offence under section 40 committed before the commencement of section 282 of the Criminal Justice Act 2003 (short sentences) the reference in section 40(7)(b) to 12 months shall have effect as if it were a reference to six months.

56. Extent

- (1) This Act extends to the United Kingdom.
- (2) But an amendment, modification or repeal effected by this Act has the same extent as the enactment (or the relevant part of the enactment) to which it relates.

57. Short title

This Act may be cited as the Commissioners for Revenue and Customs Act 2005.



*Other UK Acts | Home | Scotland Legislation | Wales Legislation | Northern Ireland
Legislation | Her Majesty's Stationery Office*

We welcome your *comments* on this site©

Crown copyright 2005

Prepared 11 April 2005

E. HM REVENUE & CUSTOMS CODE OF CONDUCT GUIDANCE (2006)

LATEST VERSION AS OF 12.1.06 - DRAFT

Code of Conduct guidance

Index page (with hyperlinks to each section)

<i>RCHRG3.2a</i>	<i>Code of Conduct: Supporting guidance for staff</i>
<i>RCHRG3.1</i>	<i>Bullying and harassment</i>
<i>RCHRG3.2</i>	<i>Care and use of HMRC property and facilities</i>
<i>RCHRG3.3</i>	<i>Computer Misuse</i>
<i>RCHRG3.3a</i>	<i>Your conduct and behaviour at work</i>
<i>RCHRG3.4</i>	<i>Confidentiality and customer privacy</i>
<i>RCHRG3.5</i>	<i>Conflicts of interest</i>
<i>RCHRG3.6</i>	<i>Disciplinary procedures</i>
<i>RCHRG3.7</i>	<i>Gifts, Hospitality and other benefits</i>
<i>RCHRG3.8</i>	<i>Honesty and impartiality</i>
<i>RCHRG3.10</i>	<i>Misconduct</i>
<i>RCHRG3.11</i>	<i>Private Conduct</i>
<i>RCHRG3.11.1</i>	<i>Outside work</i>
<i>RCHRG3.11.2</i>	<i>Political activities</i>
<i>RCHRG3.12</i>	<i>Reporting concerns</i>
<i>RCHRG3.2a</i>	<i>Code of Conduct: Supporting guidance for staff</i>

Main principles

The behaviour of everyone in HMRC must comply with the *Civil Service Code* which applies to all civil servants. Following the *Civil Service Code* and our rules of conduct will mean that everything you do is above suspicion and will ensure that customers and other people we deal with are in no doubt about the integrity and professionalism of HMRC people. The *HMRC Code of Conduct* provides a brief overview of the standards we expect of everyone in HMRC and which are fully detailed in this guidance.

You must familiarise yourself with the specific rules that are set out in this guidance and other HR&L guidance. The *Civil Service Code* and our rules are there to protect you and the department. If you do not comply with them you may be subject to disciplinary action. (*LR This sentence is a repeat of one in the opening paragraph*).

The standards expected of you at work also apply when you represent the Department at events such as training courses, conferences, exhibitions, sports and recreational events.

You are expected to act within the spirit of the *Civil Service Code*, as the guidance does not cover every situation. Speak to your manager if you are in any doubt about how the rules and guidance apply in specific circumstances.

This guidance applies to all HMRC staff. There is separate guidance

- For staff.
- For managers (to follow).

RCHRG3.2a.1 - Code of Conduct: Civil Service Code

1. The constitutional and practical role of the *Civil Service* is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales¹ constituted in accordance with the Scotland and Government of Wales Acts 1998,

whatever their political complexion, in formulating their policies, carrying out decisions and in administering public services for which they are responsible.

2. Civil servants are servants of the Crown. Constitutionally, all the Administrations¹ form part of the Crown and subject to the provisions of this Code, civil servants owe their loyalty to the Administrations in which they serve.

3. This Code should be seen in the context of the duties and responsibilities set out for UK Ministers in the Ministerial Code, or in equivalent documents drawn up for Ministers of the Scottish Executive or for the National Assembly for Wales which include:

- Accountability to Parliament² or, for Assembly Secretaries, to the National Assembly.
- The duty to give Parliament² or the Assembly and the public as full information as possible about their policies, decisions and actions, and not to deceive or knowingly mislead them.
- The duty not to use public resources for party political purposes, to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code.
- The duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching decisions; and
- The duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice.
- Together with the duty to familiarise themselves with the contents of this Code.

4. Civil servants should serve their Administration in accordance with the principles set out in this Code and recognising:

- The accountability of civil servants to the Minister³ or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office holder in charge of their department.
- The duty of all public officers to discharge public functions reasonably and according to the law.
- The duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and
- Ethical standards governing particular professions.

5. Civil servants should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to the Minister or, as the case may be, to the Assembly Secretaries and the National Assembly as a body or to the office holder in charge of their department, without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Ministers, Parliament, the National Assembly or the public.

6. Civil servants should endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration.

7. Civil servants should endeavour to ensure the proper, effective and efficient use of public money.

8. Civil servants should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.

9. Civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers or Assembly Secretaries and the National Assembly as a body, and to be able to establish the same relationship with those whom they may be required to serve in some future Administration. They should comply with restrictions on their political activities. The conduct of civil servants should be such that Ministers, Assembly Secretaries and the National Assembly as a body, and potential future holders of these positions can be sure that confidence can be freely given, and that the Civil Service will conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the lawful policies of the duly constituted Administrations.

10. Civil servants should not without authority disclose official information which has been communicated in confidence within the Administration, or received in confidence from others. Nothing in the Code should be taken as overriding existing statutory or common law obligations to keep confidential, or to disclose, certain information. They should not seek to frustrate or influence the policies, decisions or actions of Ministers, Assembly Secretaries or the National Assembly as a body by the unauthorised, improper or premature disclosure outside the Administration of any information to which they have had access as civil servants.

11. Where a civil servant believes he or she is being required to act in a way which:

- Is illegal, improper, or unethical.



- Is in breach of constitutional convention or a professional code.
- May involve possible maladministration; or
- Is otherwise inconsistent with this Code.

he or she should report the matter in accordance with procedures laid down in the appropriate guidance or rules of conduct for their department or Administration. A civil servant should also report to the appropriate authorities evidence of criminal or unlawful activity by others and may also report in accordance with the relevant procedures if he or she becomes aware of other breaches of this Code or is required to act in a way which, for him or her, raises a fundamental issue of conscience.

12. Where a civil servant has reported a matter covered in paragraph 11 in accordance with the relevant procedures and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to the Civil Service Commissioners, Horse Guards Road, London SW1P 3AL. Telephone: 0207 276 2613.

13. Civil servants should not seek to frustrate the policies, decisions or actions of the Administrations by declining to take, or abstaining from, action which flows from decisions by Ministers, Assembly Secretaries and the National Assembly as a body. Where a matter cannot be resolved by the procedures set out in paragraphs 11 and 12 above, on a basis which the civil servant concerned is able to accept, he or she should either carry out his or her instructions, or resign from the Civil Service. Civil servants should continue to observe their duties of confidentiality after they have left Crown employment.

Footnotes

¹ In this Code, we use the term Administration to mean Her Majesty's Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales as appropriate.

² In this Code, the term Parliament should be read, as appropriate, to include the Parliament of the United Kingdom and the Scottish Parliament.

³ In this Code, Ministers encompasses members of Her Majesty's Government or of the Scottish Executive

RCHRG3.2b - Code of Conduct

Introduction

The behaviour of everyone in HMRC must comply with the Civil Service Code which applies to all civil servants. Following the Civil Service Code and our rules of conduct will mean that everything you do is above suspicion and will ensure that customers and other people we deal with are in no doubt about the integrity and professionalism of HMRC people.

Honesty and impartiality

You must be, and be seen to be, honest and impartial at all times in the way that you carry out your work.

Confidentiality and Customer Privacy

You must not access any information unless you have proper authority to do so. You must make sure that any information that you acquire in the course of your work, especially about our customers' affairs, is not misused or discussed within or outside the department without lawful authorisation. You must not communicate with the press or other media about your job or the business of HMRC.

Conflicts of interest

You must not use your official position or any information obtained through your employment with HMRC to further your private interests or the interests of anyone else.

Gifts, hospitality and other benefits

You must make sure that your personal judgement and integrity cannot reasonably be seen to be compromised by the acceptance of benefits of any kind from a third party.

Private conduct

You must be careful in your private conduct not to do anything which might discredit the department. You must tell your manager if you are arrested or become the subject of criminal proceedings. You should

also inform your managers about any financial or other personal circumstances which could affect the way you carry out your official duties.

Political activities

There are restrictions on the political activities that you can undertake. You must not take part in any political activities which compromises, or may be seen to compromise, your impartial service to HMRC.

Outside work

If you want to do other work, either while you are still employed by HMRC or afterwards, you must comply with special rules that govern what you can and cannot do.

Care and use of HMRC property and facilities

You must take good care at all times of HMRC's property and any other facilities provided for you. You must ensure that they are not misused in any way and must comply with HMRC's policies on acceptable use, particularly when using computers.

Your conduct and behaviour at work

You must attend work punctually and regularly and fulfil the terms of your employment. You must maintain the expected standards of conduct, behaviour, performance and attendance in line with HMRC values, policies, instructions and procedures set out in HR Guidance and elsewhere.

You must carry out all reasonable instructions given to you by your managers or by Government Ministers.

You must comply with HMRC's diversity and equality policies and practices. You are expected to demonstrate your commitment to our diversity and equality policies and strategy in your dealings with your colleagues and customers. In taking this forward you will show respect for others and treat them fairly and equally.

Reporting concerns

If you believe that you are being required to act in a way that is inconsistent with the Civil Service Code (or in a way that for you raises a fundamental issue of conscience) you should report your concerns. You should also report evidence of criminal or unlawful activity, or breaches of the Code by others.

If you believe that a decision or action affecting your employment is unfair, and the matter cannot be resolved informally, you have the right to make a formal grievance.

Disciplinary procedures

If for any reason you do not comply with the standard of conduct we expect from you, we will need to consider whether to take disciplinary action against you under our disciplinary procedures. These procedures are in place to ensure that everyone is treated consistently and fairly. They apply to everyone.

RCHRG3.1 - Bullying and harassment

HMRC information is not yet available.

Former C&E users please refer to *Conduct G3-11 (Section 16)* for current guidance.

Former IR users please refer to *The Action Against Bullying policy* for current guidance.

LR Is the HMRC bullying and harassment policy not ready yet?

RCHRG3.2 Care and use of HMRC property and facilities

You must take good care of HMRC's property and any other facilities provided for you. You must ensure that they are not misused in any way and comply with HMRC's policies on acceptable use, particularly when using computers.

- *Main principles.*
- *Loss or damage to HMRC property.*
- *Telephones.*
- *Computers.*



- *Official stationery.*
- *Official vehicles.*
- *Use of financial resources.*
- *Fuel economy.*
- *Care of personal property.*
- *Lost property.*
- *Unofficial activities on HMRC premises.*

Main principles

You will use equipment and other facilities provided by HMRC, some of which will have cost a great deal of money. You must take all reasonable care to protect against its loss, damage or misuse, particularly where we issue items to you personally (for example, portable computers, official vehicles, mobile phones etc). For further information see

Departmental Security Unit - Portable Equipment (IR) G2-9 Security (C&E).

Loss or damage to HMRC property

You must tell your manager and Departmental Security Unit, (in line with the departmental incident reporting procedure) the loss of, or damage to, any HMRC property, however it was caused, including the loss of any money. For further information see Departmental Security Unit – Security Incident Reporting (IR) Departmental Security Unit – Security Incident Reporting (C&E).

You may be held personally responsible for any loss or damage where you have been careless or neglectful.

You must always

- Safeguard computer equipment and other office machinery from theft at all times. In particular, do not leave equipment in unattended vehicles or in unoccupied premises unless absolutely necessary.
- Safeguard any keys given to you. If these are for safes, cupboards, drawers or doors etc. which must be kept locked for security reasons, you must not leave them in offices overnight unless you lock them away in a safe or steel cupboard.
- Leave heating, lighting and electrical fittings alone - if they go wrong call in the experts.
- Take full precautions against fire. In the event of a fire or a bomb threat you must follow your office procedures.

You are also responsible for the safe custody and proper use of official books, guidance and instructions available to you and for their surrender when you leave HMRC.

You must keep identity cards and badges safely and return them for cancellation on expiry or when you leave HMRC. [Link to security guidance when ready]

Telephones

You must make economical use of the telephone. For further information, see TG 9.5 Telephone Policy (IR) Office Telecommunications (C&E).

Computers

Computers are essential tools that help you in your work, and you should not hesitate to use them. However, you need to understand and follow the rules and standards of conduct when using them, these are set out in Policy on Computer Misuse (IR) Policy for the Acceptable Use Of Electronic Media (C&E) and Security (C&E).

Unacceptable use of a computer and all other forms of electronic media is a disciplinary offence that can lead to your dismissal.

Official stationery and use of HMRC postal systems

You must make economical use of official stationery. You must not

- Use it for private purposes.
- Use the HMRC's postal systems, postage paid stationery or labels for any private letters, etc.

Official vehicles

Before you can use an official vehicle or hire a vehicle for official business purposes you must be

- Recognised as an official driver, and
- Authorised to drive such a vehicle.

Official vehicles must only be used for business related journeys. For further information see *Travel Policy (IR) Official Vehicles/Official Drivers (C&E)*.

Use of financial resources

If you are responsible for spending public money you must ensure you spend it wisely and properly. Detailed guidance can be found in

Finance Manual (IR)

M2 Resource Management (C&E).

This means that

- You only spend money on those goods and services that directly support the work of the department.
- You are authorised to make the purchase and your proposals are within the limit of your spending authority if the expenditure could be considered to *be novel and/or contentious*, for example it sets a precedent for paying something we would not usually pay for, you must clear your proposals with the Financial Management and Reporting team (020 7147 0185) *before* spending the money. You must ensure, where necessary, that a business case has been drafted and approved.
- You must have the authority to authorise payment and ensure that all transactions are accounted for correctly.
- You must follow the stringent rules regarding the acceptance of gifts or hospitality which apply to those responsible for procurement and the placing of management contracts.

If in doubt you should consult either

- *Resource Management Helpdesk* (add link to e-mail address) about general expenditure.
- HR Service Centre about Personnel related expenditure.
- Accounting Services about accounting procedures.
- Financial Management and Reporting team about clearing proposals.

Novel and/or Contentious Expenditure

In most cases there is a standing authorisation for a department to incur expenditure from money voted by Parliament without specific prior approval from HM Treasury. The delegated authorities who can authorise spend are set out in *M-18 The Authority to make Decisions (C&E)* and the *Finance Manual (IR)*. However, in the case of novel and/or contentious spending proposals there is no delegated authority. *Proposals for spending any amount must be submitted to the Treasury for consideration and approval.*

Novel and/or contentious spending is difficult to define. Typically novel and/or contentious expenditure can be identified by the fact that the expenditure raises questions on whether

- The expenditure is proper to core business of the department and/or.
- It sets a precedent for payment where previously the department has expected costs to be met by others.

Recent examples of the former departments' spending proposals that have been submitted to HM Treasury as novel and/or contentious are

- Expenditure on the construction of buildings in the Trader Provided Free areas at ports and airports.
- Meeting the costs of staff parking beyond that which would normally be covered by T&S and,
- Payments to the police to carry out activities not directly relating to former Customs business delivery.

If the case has to be submitted to HM Treasury then you will be asked to submit paperwork, via Financial Management and Reporting team, for HM Treasury consideration. The department must seek advice from



HM Treasury *before* committing to any expenditure and, until approval has been given, no action should be taken to make payment.

Any expenditure which is deemed novel and/or contentious and which has not been approved by HM Treasury is irregular and may be illegal. HM Treasury may be prepared to give retrospective approval for irregular payments. However, illegal payments cannot be made legal. It is illegal to use Departmental funding on any activities that are not covered by the formal description of our services submitted to Parliament.

Irrespective of amount, for irregular payments where retrospective approval is not given or where illegal payments have been made, the National Audit Office will be informed. The accounts produced by the department may be qualified and the Public Accounts Committee may decide to hold an oral hearing. As the department will have spent money that Parliament has not voted to us, the position will have to be regularised by the department having to formally ask Parliament for the funds.

Fuel economy

HMRC spends a lot of money each year on fuel for heating, lighting, running equipment, etc. You must follow instructions for using this economically.

Care of personal property

Loss of or damage to personal property – general approach

HMRC does not generally accept responsibility for the safety of your personal property when it is kept on official premises or in official vehicles. You are responsible for taking care of it.

We do not accept responsibility for losses of personal property kept at work even when it was locked up.

Loss of or damage to personal property in course of duties

If your personal property, including a private car, is lost or damaged in the course of your duties, we may consider a claim for compensation if you were not negligent or careless.

For further guidance see G3-7 M (C&E) http://guidance.hmce.gov.uk/G_Series/G3-7M_Personnel_miscellaneous/SEC12.DOC

Payment will not normally be made for portable items

- Left in the office overnight.
- Left in an official car or a car being used for official purposes.

We will not compensate you for

- Lost money.
- Luxury items (this does not include wedding or engagement rings).
- Bicycles brought onto official premises whether being used on official business or not.
- Any item covered by an insurance policy or other scheme giving free replacement. For further information see.

Departmental Security Unit - Reporting Security Incidents - Incident Types (Losses) (IR) Departmental Security Unit - Incident Reporting (C&E)

Lost property

If you find lost property or money on official premises or when you are on official duty you must report it immediately.

Unofficial activities on HMRC premises

Activities involving staff monies

A senior manager must be aware of and approve the existence of unofficial activities organised on HMRC premises that involve staff monies. For example, Christmas clubs, savings clubs, Lottery syndicates, etc. Senior managers must ensure that

- Responsible officers are handling the money.
- The money is always kept secure.
- Records are properly maintained.

This does not apply to activities organised by unions.

Betting and gambling on official premises

We do not allow betting and gambling on official premises. However, this does not affect lottery syndicates or approved office sweepstakes.

Use of official premises, facilities or computers and outside work

You must not use official premises, facilities or computers in connection with any outside work.

RCHRG3.3 - Computer misuse

HMRC information is not yet available.

Former C&E users please refer to [xxxxx](#) (add hyperlink) for current guidance.

Former IR users please refer to the *Computer Misuse Policy* and *Computer Misuse: Manager's Guide* for current guidance.

RCHRG3.3a Your conduct and behaviour at work

You must attend work punctually and regularly and fulfil the terms of your employment to the best of your ability. You must maintain the expected standards of conduct, behaviour, performance and attendance in line with HMRC values, policies, instructions and procedures set out in HMRC guidance and elsewhere.

You must carry out all reasonable instructions given to you by your managers or by Government Ministers

You must comply with HMRC's diversity and equality policies and practices. You are expected to demonstrate your commitment to our diversity and equality policies in your dealings with your colleagues and customers. In doing so you will show respect for others and treat them fairly and equally.

- *Main principles.*
- *You and your manager.*
- *Relationships with colleagues, customers and others you come in contact with.*

Main principles

The *Civil Service Code* (add hyperlink) sets out the constitutional framework within which all Civil Servants work and the values they should uphold. It forms part of the terms and conditions of employment of every Civil Servant.

We expect you to fulfil your terms of employment to the best of your ability. In doing so, you must try to maintain good working relationships with colleagues, managers and customers. You are also responsible for maintaining acceptable standards of conduct, attendance and performance.

You and your manager

Your managers are responsible for, among other things, ensuring that

- You follow our policies, instructions and procedures, to the extent that they are relevant to your work and
- You carry out any instructions including, where appropriate, those of Government Ministers.

We expect and will encourage you to discuss how you do your work and to take responsibility for what you do. However, decisions about working practices are ultimately matters for your managers and you must follow their reasonable instructions.

If you believe you are being required to act in any way which is inconsistent with the *Civil Service Code* (add hyperlink) you must report your concerns. (see *Reporting Concerns*)

Relationships with colleagues, customers and others you come into contact with

Our behaviour is guided by HMRC Values.

We all have a responsibility to treat colleagues, customers and other people we come into contact with in a civil, polite, professional and considerate manner without discrimination, harassment or victimisation. We should treat others in the manner they wish to be treated. To do otherwise may amount to bullying or harassment.

(LR Can this be linked to the new Bullying and harassment policy)



We will not tolerate bullying, harassment in our workforce and if proven we will treat such behaviour as a disciplinary offence, which could result in dismissal in serious cases. It could also amount to a criminal offence.

RCHRG3.4 Confidentiality and customer privacy

You must not access any information unless you have proper authority to do so. You must make sure that any information you acquire in the course of your work, especially about our customers' affairs, is not misused or discussed either within or outside the department without lawful authorisation. You must not communicate with the press or other media about your job or the business of HMRC.

- *main principles.*
- *handling personal and confidential information.*
- *legal obligations.*
- *the Data Protection Act.*
- *using computers and the law.*
- *disclosure rules.*
- *use of information retrieval facilities.*
- *dealing with the media.*
- *media interest in you as an individual.*
- *speaking engagements relating to HMRC's business.*
- *crown copyright.*
- *speaking to your constituency Member of Parliament.*
- *publishing or broadcasting personal memoirs reflecting your experience in the department.*
- *participation in surveys or research projects.*
- *confidentiality and Union representatives.*
- *witness summons.*
- *raising concerns about malpractice.*

Main principles

We take a serious view of any failure to observe proper standards of confidentiality and customer privacy. Any breach will be investigated and disciplinary action up to and including dismissal may be taken against the individual involved. You must take great care with all official information and you

Must not

- Mention confidential official matters in conversation anywhere outside the department, or in any circumstances where they risk being made public.
- Seek to access, view, or ask others for any information about our customers unless you need it for your particular job and are legally entitled to the information.
- Speak to the media on behalf of HMRC or on issues relevant to our work unless authorised to do so.

Must

- Ensure that confidential information is disclosed only to people authorised to receive it including.
 - National Insurance numbers.
 - VAT Registration numbers.
 - Private or business addresses.
 - Occupations or financial circumstances.
- Avoid discussing confidential official matters if there is a risk you might be overheard by someone who is not authorised to know the information.
- Be constantly alert to attempts to obtain information about customers by deception - any bogus or suspicious correspondence, telephone or counter calls must be reported to your manager immediately.

- Ensure that any computer data you are using is safeguarded in accordance with the security requirements of the business application and
 - The *Departmental Security Unit [DSU] and standards guidelines* [add hyperlink to DSU DSM4030 (Data and Information Security)] (IR).
 - *G2-9 Security Management – Control of Information, Documents and Other Assets* (C&E) [add hyperlink to G2-9].

this means being careful regarding access to the data, for example.

- Taking precautions whilst working to protect information.
- Guarding against unauthorised people viewing your screen.
- Not allowing printed output to be read by anyone who does not have a right to see it.
- Ensure that your computer data is properly backed up.
- Refer all enquiries from a journalist or someone you suspect might be calling on behalf of the media to HMRC *Communications and Marketing*.

You must also safeguard any official papers in your care - this means you must not

- Part with them other than when you need to do so in the course of your duties.
- Keep them when you no longer need them. You must comply with any official instructions for their return and disposal and report the loss of any official papers immediately to your manager and Departmental Security Unit where security classified documents are involved.

You are required to report any information leaks or breaches of security policy to Departmental Security Unit.

Further advice on all these matters can be obtained from
Departmental Security Unit (IR) Departmental Security Unit (C&E)

Handling personal and confidential information

While you work for us you will handle the personal and confidential information about individual customers. As an employee of HMRC you must remember that

- You have the authority to look at, or ask others for, information about our customers *only* if you need it for your particular job and are legally entitled to the information.
- Confidential information about the affairs of individual customers is given to us on the basis that it will *not* be.
 - Revealed to anyone who does not have a right to know it and
 - Used for any purpose other than a proper business need.
- It is your duty to ensure that there is no breach of this trust.
- There is a general requirement on you not to disclose anything about HMRC's business without lawful authority.

Legal obligations

As an employee of HMRC you are bound by the provisions of the Official Secrets Act 1989, and the Commissioners for Revenue and Customs (CRC) Act 2005.

Section 18 of the CRC Act places you under a strict duty not to disclose information held by HMRC in connection with its functions except in certain limited circumstances. Breach of this duty could leave you personally liable to disciplinary action, or prosecution for a criminal offence with penalties of up to two years' imprisonment, or a fine, or both. The duty continues to apply after you have left the department.

Section 3 of the CRC Act requires that you make a declaration acknowledging this duty as set out in Section 18 of the Act, as soon as is reasonably practicable after appointment.

For further information see

Launch information – customer confidentiality

Guide to Confidentiality (IR) *

IM 35: Disclosure (C&E). *

[* Both of these sets of guidance will be shortly be replaced by a single guide, provisionally called the "Information Disclosure Guide"] [LR is this ready yet? If it is it is better to link to it]



The Data Protection Act / Freedom of Information Act

The Data Protection Act (DPA) safeguards the rights of people, both members of staff and the public, whose personal information we hold, by imposing restrictions on the way in which we can use the data. It sets out 8 principles designed to ensure that personal data is processed lawfully and that data subjects are not misled about how their personal information is be used.

Under the DPA you can be held personally liable to prosecution if, for example, you

- Knowingly or recklessly, without the consent of the data controller obtain or disclose personal data or the information contained within the personal data.
- Alter, deface, block, erase, destroy or conceal personal data that is subject to a request for access under the DPA, with the intention of preventing the disclosure of the information to which the applicant would have been entitled.

Similarly you can be prosecuted under the Freedom of Information Act.

If you need any general advice on Data Protection issues or the Freedom of Information Act , you should contact

DATA Protection Unit (0191 225 7602)

Knowledge Resources Team: Information Law (020 7417 2412)

Further information can be found on the Intranet pages for

Knowledge Analysis & Intelligence

Data Protection

Freedom of Information

Using computers and the law

As well as the general obligations set out above, there are also specific legal obligations that apply to you when you use a computer. In particular

- The Computer Misuse Act 1990 makes it a criminal offence to exceed, or attempt to exceed, your authorised use of a computer and the data contained in it.
- The Copyright Design and Patents Act 1988 covers the illegal copying of computer software.

If you have any doubts about how these Acts apply to you, speak to your manager or someone in the

Departmental Security Unit (IR)

Electronic Communications Team (C&E).

Disclosure rules

The above obligations mean that you must not disclose official information without lawful authority to anyone including

- Other Government Departments.
- The Police.
- Any other public or private body.
- Any private individual, including Members of Parliament , and
- Other members of the department unless it is needed for their own official work.

You may only disclose information about customers when

- The customer has given written consent; or.
- You are specifically allowed to by law.

The Customs and Revenue Commissioners [CRC] Act includes clarifies and places clear limits on the circumstances in which public interest disclosures may be made lawfully. This is covered in *separate guidance* [add hyperlink to <http://intranet.active.hmrci/launch/lch069.htm>].

If you are ordered by a court or tribunal to disclose information relating to HMRC offences in connection with a criminal investigation or prosecution take advice from *Solicitors Office*.

Other disclosures outside HMRC, for example to other Government Departments, remains strictly subject to existing statutory gateways. You must consult the DPA team for more information on disclosures outside HMRC.

For further information see

Accessing customer records and use of information retrieval facilities

You must only access a customer record where you have a clear and unambiguous business reason for doing so. You must not access or attempt to access a customer record, **including your own**, held on HMRC databases

- For curiosity.
- For an personal non-business related reason.
- Where there could be a conflict of interest, either real or perceived.
- To check the compliance status of a customer for personal reasons.
- That relates to you or your spouse, partner, family or friends.

Computer records include not only the main business file(s) but also records containing information such as personal addresses or other information.

You must use the computer tracing facilities only for your work. You must not trace information for entertainment, personal or casual interests.

HMRC will take any breach of this policy very seriously. Breaches will result in disciplinary penalties up to and including dismissal. If you access customers' records without a legitimate business reason you will normally be dismissed. In cases where fraud or disclosure of the information is involved you could also be prosecuted".

Dealing with the Media

You must not communicate with the media on behalf of HMRC or on issues relevant to our work unless authorised. This includes newspapers, radio, television (terrestrial, satellite and digital) magazines and websites.

Dealing with the media is a specialist role which requires careful handling. It is important to deliver the correct messages to the media and our aim is to communicate in a balanced, accurate, co-ordinated and timely way. Any contact from the media must be passed to *Communications and Marketing*.

You must obtain permission from your senior manager *and* Communications and Marketing before you

- Contribute to any media interview or broadcast in your capacity as a HMRC official.
- Speak and/or write to the media about any official information which comes into your possession.
- Publish in whichever form outside the Civil Service, any letter or statement relating to the department's business and/or.
- Publish or assist in publishing, any articles or other material that you have produced as part of your official duties.

Media interest in you as an individual

Media interest in you as a private individual can sometimes impact on the work of the department. If you believe this to be the case you should report the fact to your manager and to Communications and Marketing immediately.

Speaking engagements relating to HMRC's business

You must obtain permission from your senior manager (in advance) before making any lecture or speech relating to HMRC's business.

If you have permission to make any speech relating to HMRC's business and you know or have reason to believe that representatives of the media are to be present, you must also obtain permission from Communications and Marketing.

If you receive permission from HMRC to deliver a lecture or to take part in a seminar relating to official work, you must make sure that you are familiar with HMRC's rules on fees and gifts in lieu of fees. For further information see *Gifts, hospitality and other benefits - Public speaking engagements*.

You should make it clear at the outset to any sponsoring organisation that the copyright in any document, relating to a lecture or speech, belongs to the Crown. A reproduction of the article must include the copyright legend.

"Crown Copyright 20-- (insert the year of production)"



Crown Copyright

Under the Copyright, Designs and Patents Act 1988 the Crown owns the copyright of any work produced by civil servants in the course of their employment. You must obtain permission from your senior manager and Communications and Marketing before anything you have produced in connection with your work can be published.

Guidance on 'Crown Servant Papers' can be found at www.hmso.gov.uk/copyright/guidance/articles.htm

Speaking to your constituency Member of Parliament

You have every right to speak to your constituency Member of Parliament about personal issues including your terms and conditions of service. However, if you do so you must remember that you remain bound by the Official Secrets Act and the Civil Service Code. You must observe the HMRC's rules on confidentiality, for example, on disclosure of confidential information about departmental controls or other information that is not normally made available outside HMRC.

Publishing or broadcasting personal memoirs reflecting your experience in the department

You must not publish or broadcast personal memoirs reflecting your experience in the department or enter into commitments to do so while you still work for us. You must also seek permission

Participation in surveys or research projects

You must not take part, in your official capacity, in surveys or research projects, even on a non-attributed basis, if they deal with attitudes or opinions on political matters or matters of policy.

Confidentiality and union representatives

Special rules on confidentiality apply if you are an elected national, departmental, branch or local office representative of a recognised union. As a union representative

- You do not need to get permission before publishing *your union's views* on matters that directly affect the conditions of service of your members, except where your official duties are directly concerned with the matters in question.
- In public discussion about pay or conditions you must avoid being drawn into disclosing, even in general terms, any information obtained from official sources.

All other rules on confidentiality apply to you in the same way as for everyone else. It is particularly important to avoid releasing information that would be of assistance to people wishing to evade the department's controls.

Making unauthorised comments and disclosing in public, whether or not the information is already in the public domain, will be regarded a breach of the Civil Service Code, and may lead to disciplinary action. For example

- Statements on levels of staffing in particular areas or regions.
- Patterns of attendance.
- Methods of control or.
- The frequency of visits by staff.
- Pay or conditions.
- Information obtained from official sources.

These are likely to undermine the department's operations and must be avoided. All other rules on confidentiality apply to you in the same way as for everyone else.

These special arrangements for union representatives will not apply where, during an interview or in an article, the representative concerned specifically refers to his or her position in HMRC. In these circumstances the normal arrangements for seeking prior approval for clearing the text will apply. See *Dealing with the media*.

Witness Summons

If anyone from outside HMRC wants to call you as a witness on any matter connected with your official duties, we usually require them to serve a notice on you. This is so that we can ensure that HMRC remains neutral, and we can consider whether a claim for Public Interest Immunity is necessary.

If you are served with a notice or witness summons you should report the facts immediately to *Solicitors Office*.

Raising concerns about malpractice

The Public Interest Disclosure Act 1998 (PIDA) provides employment protection to employees who raise genuine concerns about internal malpractice in a responsible and reasonable manner. For further information see *Reporting Concerns*.

RCHRG3.5 Conflicts of interest

You must not use your official position or any information obtained through your employment with HMRC to further your private interests or the interests of anyone else.

- *Main principles.*
- *What are conflicts of interest.*
- *What you and your manager must do about actual, apparent or potential conflicts of interest.*
- *Investing in shares and market sensitive information.*
- *Giving assistance to your family members, friends and acquaintances on tax, VAT, NIC and other duties or matters for which this department is responsible.*
- *Official banking accounts.*
- *Work outside HMRC.*

Main principles

You must take all possible steps to protect yourself and HMRC from any allegation or perception of impropriety, however mistaken. You must report any real or potential conflict of interest to your manager on joining HMRC or as soon as you are aware of it.

This guidance is not intended to be exhaustive but it should help you decide what you must do to reduce your risk of getting involved in a situation where

- There could be an actual conflict of interest, or
- It could appear to someone inside or outside HMRC that there was potential for such a conflict.

A conflict of interest can arise if you see a file or letter by accident if the information relates to a customer whose affairs you deal with on a regular basis.

What are conflicts of interest

Examples of circumstances involving actual conflicts of interest include

- Undertaking financial transactions, for example buying or selling shares where there is some connection, however slight, with your work in HMRC. This includes transactions made on your own account and those made for the benefit of any other person(s) including spouses, partners, parents, siblings, children and friends, or person(s) acting as trustees or executors in relation to their affairs.

However, if you are working, for example, on ISA policy this guidance would not stop you from opening an ISA in the same way as any other investor, but it would stop you taking advantage of any special knowledge you have obtained in the course of your work.

- Giving advice to anyone in circumstances where you were, or it could be thought that you were, revealing or making use, or enabling others to make use, of knowledge or connections gained through your work in HMRC. For example, it would be very wrong for someone with detailed knowledge of risk assessment procedures to advise a friend on how to organise their affairs to escape selection for enquiry.
- Being involved or associated in any way with a financial transaction (such as buying or selling shares) made by friends, relatives or others (whether individuals, companies or trusts) at a time when, through your work in HMRC, you had *any* information relevant to the transaction which was not available to the general public.
- Where in the course of your work you come across directly, or indirectly, any file or record relating to a friend or relative, or any other person with whom you have, or have had, a personal involvement.



- Where you have a personal association with a business, you must not make official visits or seek access to official papers relating to either that business or to competing traders.

you should also remember that conflicts of interest can arise from official dealings with, or in respect of, anyone who shares your private interests, for example, membership of clubs, societies or other organisations.

Apparent conflicts of interest

Apparent conflicts of interest may also give rise to problems.

If it looks to a disinterested third party that you are taking advantage of information or connections gained through your work in HMRC in order to benefit yourself or others, there is a risk it may be thought you acted improperly. For example, if you visit a club or organisation in your official capacity of which you are a member or of which you have a close association, people may assume that you are providing some kind of assistance to the management. You must therefore take any sensible steps to distance yourself from transactions or activities where you may be vulnerable to criticism or accusations.

Avoiding a Conflict of Interest

You may think it highly unlikely that anyone would believe there is a conflict of interest, in a particular situation. Nevertheless, you must always carefully consider if there is a risk of an allegation of impropriety (however mistaken) against you, your family, your friends and HMRC. *If you are in any doubt, side with caution and talk to your manager.*

What you and your manager must do about actual, apparent or potential conflicts of interest

As soon as you become aware of an actual, apparent or potential conflict of interest you must tell your manager.

Your manager will

- Acknowledge in writing what you have said.
- Decide what to do next to manage the conflict, for example, allocate the work to someone else or consult the relevant customers with your consent.
- Make a record of the details of the conflict of interest and how it is to be managed, noting any conditions imposed.

If you do not want to tell your manager you must tell a senior manager.

You must comply with any conditions imposed.

Investing in shares and market sensitive information

You can invest freely in shares, but

- You must not buy or sell shares or be associated with transactions if there is a connection between that company and your HMRC work.
- You must not use in any way, for your personal gain or that of any other person, information you obtain about a company in the course of your duties and that is not publicly available.
- If your duties are such that you regularly receive market sensitive information there may be special arrangements in place to protect you as well as HMRC. Offices that have jobs handling market sensitive information on a regular basis hold details of these arrangements. Senior managers in those offices are obliged to remind their teams of the special arrangements on a regular basis.

Wherever you work, if you are unsure of what you should do, talk to your manager.

HMRC is one of a number of bodies the Stock Exchange may approach when investigating possible insider dealing, which is a criminal offence. We will provide confirmation if any member of staff appears on a list provided by the Stock Exchange.

Giving assistance to your family members, friends and acquaintances on tax, VAT, NIC and other duties or matters for which this department is responsible

Your family members, friends and acquaintances are responsible for their own tax affairs and they must ensure that they meet their own obligations under the law.

You can provide the same level of advice and assistance to your family, friends and acquaintances, as you would give to the general public. However, you *must* not

- Access any departmental computer or other records to do so.
- Act as their agent or make use of your knowledge of HMRC procedures, tolerances etc to secure an advantage for them.
- Assist in the preparation or submission of accounts, documents, computations for tax, VAT or NIC or operate PAYE and NIC.
- Deal with any other matters for which the department is responsible including those *for any business activity* conducted by your wife, husband, partner or other members of your family, friends or acquaintances. This prohibition includes business activities operated by family members, in conjunction with others, by way of a partnership or company.

The *only* exceptions to these rules are

you *can* make

- Returns or declarations in an honorary capacity made on behalf of a club or charity.
- Returns or declarations made directly in a personal capacity.
- Returns or declarations made by a member of staff who has been given permission to carry on a business in a privately run business or partnership where you are legally bound to deal with the tax affairs. For further information, see *Outside work: Taking on other work*.
- Returns and declarations made if you are acting in accordance with the duties imposed on you by reason of an enduring power of attorney.

In all these cases you must ensure that all the accounts and supporting documents are accurately prepared and that the returns and declarations are accurate and submitted on time.

You must comply with any instruction regarding the retention, disposal or management of such interests.

Official banking accounts

If you are in charge of an office or have the responsibility for holding a Crown account, you must not obtain or attempt to obtain from the bank holding that account, any special privileges regarding bank charges for either yourself or others. Nothing must be done to suggest that the choice of bank or the management of a public account could have been influenced by an officer to their personal advantage.

Transferred to outside work

RCHRG3.6 Disciplinary procedures

If for any reason you do not comply with the standard of conduct we expect from you, we will need to consider whether to take disciplinary action against you under our disciplinary procedures. These procedures are in place to ensure that everyone is treated consistently and fairly. They apply to everyone.

For information see

TG9 Conduct and Discipline - disciplinary procedures(IR)
G3-11A Discipline (C&E)
Alcohol and Drugs Policy [add hyperlink]

RCHRG3.7 Gifts, hospitality and other benefits

You must make sure that your personal judgement and integrity cannot reasonably be seen to be compromised by the acceptance of benefits of any kind from a third party.

- *Main principles.*
- *General rules about accepting gifts, hospitality and other benefits.*
- *Recording of benefits offered.*
- *Dinners receptions and other functions.*
- *Awards and award ceremonies.*
- *Contracts and other purchasing decisions.*
- *Public speaking engagements.*
- *Bribes and other inducements.*
- *Incidental benefits arising from goods and services paid for by official money.*



- *Offers of free travel for official purposes.*
- *Concessions and discounts offered to members of HMRC.*
- *Purchases of government articles by staff.*
- *Purchase of seized goods by staff.*

Main principles

As an employee of HMRC you must be and be seen to be beyond reproach in everything you do. From time to time you may be offered gifts, inducements or hospitality that may seem innocent. However, others could misinterpret your acceptance of them and you must take great care in these situations. These rules are for your protection and you must follow them.

If you are in any doubt about what you should do, get advice from a senior manager.

General rules about accepting gifts, hospitality and other benefits

To maintain your personal integrity and that of the department, there must be no question about your objectivity in dealing with customers, suppliers or contractors. To avoid any suggestion of impropriety between your official duties and private interests you must not accept benefits of any kind from a third party, except

- Isolated gifts of a trivial nature such as calendars or diaries, or.
- Occasional conventional hospitality, such as working lunches on official visits, or.
- Invitations to you (and to a partner) to annual dinners of large organisations with which you are in regular contact as a representative of HMRC, for example, CBI or accountancy bodies.

You must obtain approval from your senior manager before you accept anything which is not of a trivial nature. Only in exceptional circumstances will you be allowed to accept what is offered, for example, a personal memento from a representative body to mark the end of a long and constructive working relationship. If you are concerned that refusal of a gift or hospitality will offend explain that HMRC policy does not allow you to accept gifts or hospitality, decline politely and tell your manager what has happened.

This also applies to gifts from overseas Governments or Governmental organisations. However, in these circumstances it may be more difficult to refuse a gift without appearing rude or causing offence.

Advice on acceptance or disposal of gifts can be sought from Corporate Governance [add hyperlink] or the Conduct and Discipline team [add hyperlink].

Recording of benefits offered

If you have permission to accept an offer of a gift or hospitality, for example, invitations to working lunches and dinners, you must record the details in the gifts and hospitality register held in your location. This includes the acceptance of a gift that is trivial in nature, for example, calendars or diaries. Minor refreshments such as tea coffee and biscuits need not be recorded.

You must also report or record any significant single offer or inducement (worth £25 or more) or repeated offers that you have declined. If you are in doubt about reporting an offer you have turned down, you should seek advice from your senior manager, the Conduct & Discipline team [add hyperlink] or Corporate Governance [add hyperlink].

Dinners, Receptions and other functions

Events where guests pay

Apart from those annual dinners covered by general rules about accepting gifts, hospitality and other benefits you should refuse invitations to dinners or lunches where other guests are expected to pay for tickets, unless

- You attend on the same basis as other paying guests, for example, you pay for your ticket, or
- Your manager considers it appropriate that the department should be represented at such functions. In which case the department will meet your costs of attending, to the extent it is not covered by the normal travel and subsistence allowances.

Free Events

You may occasionally be invited to free receptions or lunches. These may be organised by consultants or other potential suppliers where there is no express business purpose, other than to promote their services or products. You may only attend if

- The hospitality is not lavish and does not include other entertainment such as attendance at a sporting or cultural event and is properly recorded as in recording of benefits offered, above, and
- Your senior manager records that there is a clear business advantage to HMRC, for example, obtaining information or making important contacts with other attendees.

Apart from invitations to annual dinners covered by the general rule you must always refuse an invitation to include a partner unless, exceptionally, the partner *will be* attending in a genuinely representative capacity. If you accept an invitation for business reasons and an invitation is also extended to your partner then, unless the representative exception applies, you will have to pay the cost for your partner out of your own pocket.

You must not accept free tickets for cultural or sports events. If you have any doubts about what you should do, talk to your manager.

Awards and award ceremonies

Awards and prizes

If you are offered an award or prize connected with your official work, tell your senior manager immediately. They will decide if approval can be given for you to accept it.

You may be allowed to keep the award provided that it is

- Offered in recognition of personal achievement.
- Not a gift.
- Not payment for a publication or invention.
- Not a decoration or medal offered by a foreign government. (The Foreign and Commonwealth Office must be consulted in such cases).

The offer or acceptance of any award or prize must be recorded in the office gifts and hospitality register.

Award ceremonies

If HMRC is to receive an award and you are asked to be present at the award ceremony, or if you are to receive an award in connection with HMRC's business, we will meet any expenses you incur in attending the ceremony.

If the ceremony involves hospitality, such as a dinner, you must obtain permission from your manager and record the hospitality in the office gifts and hospitality register.

Contracts and other purchasing decisions

There are particular risks involved with accepting gifts from anyone you are negotiating a contract with or buying something from. It is very important that you follow HMRC's rules in these cases. See

Purchasing Ethics (IR)
The Purchasing Manual (C&E).

All purchases must be in line with procurement policy and you must not let inducements or offers influence your purchasing decision..

Public speaking engagements

Fees

If you are asked by an outside organisation to give a lecture or talk about HMRC, you must follow the guidance issued by *Communications and Marketing - Media Relations* [add hyperlink] and request permission from a senior manager.

HMRC's policy is that you should charge a fee for the services given where the preparatory work is wholly or partly in official time. You may be allowed to retain a proportion of the fee where it is necessary for part of the work to be done in your own time. For tax purposes you must include the fee in your return of income for the relevant year.

a. Gifts

You may be offered a benefit-in-kind when no fee is sought. You can accept a *modest* gift such as a bottle of wine if the circumstances are such that it would be difficult to refuse without appearing rude. You must refuse anything more substantial or return it with appropriate thanks and a suitable note of explanation and register it in the office gifts and hospitality register as an offer. You must not accept gifts "on behalf of HMRC".



b. Travel and Subsistence Costs

Whether or not a fee is charged, the normal rule is that the host organisation should cover your travel and subsistence costs. This can be included in the fee but, to avoid constant loss to the office budget, the host organisation can cover the costs by reimbursing you personally. The payment does not exceed the amount you would have been able to claim from HMRC and, in these circumstances; you must not make any T&S claim. Although this is not a gift as such it should still be recorded in the office gifts and hospitality register.

c. Talks to Local Clubs

If you wish to give a talk to a small local club, in your own time, which involves the use of official information or experience you must obtain permission from your manager. See *Confidentiality and customer privacy: Media Interest in you as an individual* [add hyperlink]. If permission is granted it will be on condition that

- The talk is given in your private time.
- Official expenses (including official travel expenses) will not be paid.
- You must only include information that is suitable for disclosure, is accurate and reflects current Departmental policy, and
- If a payment or donation is made, you will be allowed to retain only the expenses you incurred and the remainder should be donated to a departmental charity, for example, family fund.

Bribes and other inducements

If you believe someone is attempting to bribe you or offer you an incentive to act in a particular way, you must tell your manager immediately.

Under the Prevention of Corruption Act 1906, it is an offence for you to solicit or accept any gift or consideration that may influence or reward you for acting in a particular way in your official capacity. Furthermore, under the Prevention of Corruption Act 1916, such gift will be regarded as being received corruptly unless proved otherwise.

Incidental benefits arising from goods and services paid for by official money

Many commercial organisations offer "free gifts" to anyone using their services some trivial and some substantial. Many take the form of "points", such as Frequent Flyer Schemes, which accumulate as more goods are purchased or as the service is used. If possible, any incidental benefits of this kind are to be used to the department's advantage, for example, by reducing the cost of a subsequent official business trip. They must not be used for private purposes as this would contravene the principle that civil servants should not benefit in their private capacity as a result of their official duties. You must not let inducements or offers influence your purchasing decision. All purchases must be in line with purchase policy.

Frequent traveller schemes etc

There is no objection to you participating in frequent traveller schemes or similar schemes. However, if the benefits have been obtained as a result of money paid by the department, they must be used only when you travel on official business. Any benefits that are obtained from such schemes must be reported under the procedures for recording of benefits offered. See Recording of benefits offered [add hyperlink]. Their use for private purposes is only allowed in the following circumstances

- If you are delayed while travelling on public transport on official business you may retain any compensation you receive where.
 - All or part of the delay occurred outside normal working time.
 - You are not paid for travelling time and
 - You do not take the time off in lieu.
- If you retain any compensation under these circumstances you should report this under the procedures for recording of benefits offered. See Recording of benefits offered [add hyperlink]. There is no tax liability on any compensation that you retain.

Because of the difficulty in applying these guidelines, small quantities of "points" for the purchase of petrol or for the use of personal credit cards (excluding official travel) can be ignored provided they do not amount to a significant benefit over the year. If the amounts involved cannot be ignored, your apportionment of official/private points will be accepted at face value unless there is reason to doubt its accuracy. If you are uncertain as to whether amounts are significant or not, talk to your manager.

Offers of free travel for official purposes

Some travel companies, airlines, or ferry companies may offer adhoc free travel by offering vacant seats or places to the department for use on official business. You must not accept such an offer locally as it may

lead to the suspicion that there is an improper relationship between the company making the offer and the department and could lead to public criticism. In some cases it may be possible for the department to negotiate such arrangements centrally. Where this is being considered you must refer the matter to the appropriate policy branch responsible for your work area who will consult the HR Conduct and Discipline policy team..

Concessions and discounts offered to members of HMRC

You may accept concessions or discounts available to members of the public, or those offered because of membership of a national organisation. Travel and other concessions or discounts that are available because of the conditions of employment of a close relative may also be accepted.

If you wish to make use of other concessions or discounts available to you as a result of your official duties or because you are a member of HMRC, you must make sure that your acceptance does not breach the above principles or those in the *Civil Service Code* (add hyperlink).

You should be cautious of offers of discounts to members of the department advertised through unofficial sources, especially travel concessions.

Discounts negotiated or obtained by the department for official purposes, such as discounted hotel rates, must not be used privately either by yourself or for others. If you are in any doubt ask your manager for advice.

Travel concessions

Acceptance of offers may not appear to breach the principles of conduct, especially if you have no direct official dealings with the company making the offer. Such offers may be acceptable providing it is the company's normal practice to offer the discounts to a number and variety of organisations based on the purchasing power of their employees as individuals.

It may be that the offer is only made available to employees of targeted organisations, for example, those in the travel industry or those who have employees at ports or airports. If it cannot be demonstrated that the offer has been based on the purchasing power of the staff as individuals in the organisations, it will be considered that the offer has been made available to you as a result of your official duties or association with the department and the offer will be unacceptable.

Courier flights

Certain companies offer flights at significantly reduced prices to individuals who agree, on behalf of the company, to accompany or carry goods or documents on the journey. Because this activity is considered to be a form of temporary employment that could conflict with the interests of the department, you must seek permission *before* entering into any such agreement.

Purchases of Government articles by staff

You are free to buy articles of Government property which are on sale to the public, for example, HMSO publications. You may also buy surplus Government articles that may be offered by departments for sale to the public, unless

- You have, because of your official position, been able to obtain special knowledge about the condition of the goods to be sold.
- You have been officially associated with the disposal arrangements.
- You receive the goods at a discount that would not be available to a member of the public.

Purchases of seized goods by staff

Members of HMRC must not be thought to have an advantage over members of the public in the purchase of seized goods and you are not permitted to make purchases at HMRC sales, either directly or through a third party.

If you were officially involved in the disposal arrangements or, because of your official position, obtained special knowledge about the goods you may not purchase

- Goods bought by traders at such sales.
- Goods offered for sale or auction by HMRC.

If you are not sure seek advice from your manager.

RCHRG3.8 Honesty and impartiality

You must be, and be seen to be, honest and impartial at all times in the way that you carry out your work.



- *Honesty in everything you do while working for us.*
- *Impartiality in dealing with customers.*

Honesty in everything you do while working for us

We expect and have a duty to ensure that our staff to be honest in everything that they do while working for us. This is particularly important given the vast sums of public money that HMRC deals with, the extensive legal powers we have and because the integrity of the department depends on how honest and impartial our employees are seen to be.

We therefore take a very serious view of anyone acting dishonestly, for example, by

- Defrauding HMRC by
 - Manufacturing false claims for repayment of tax or VAT.
 - Being involved in fraudulent contribution irregularities.
 - Knowingly assisting in the fraudulent evasion of any import or export prohibitions, (*goods which are banned completely e.g. unlicensed drugs, offensive weapons, indecent and obscene material, counterfeit and pirated goods, meat, milk and other animal products*), restrictions (*goods which cannot be imported without authority, such as licence e.g. firearms, explosives and ammunition, live animals, endangered species, certain plants and their produce, certain radio transmitters*) and duties including tax and VAT or
 - Obtaining or attempting to obtain tax credits or benefits to which entitlement does not exist.
- Making false travel and subsistence claims.
- Making false claims for overtime payments.
- Failing to report errors in pay and allowances.
- Having personal tax irregularities.
- Misappropriating official property and
- Sealing from colleagues, social club funds etc.

Our expectation of honesty from you extends not just to financial matters, but also to all areas of your work. For example, you *must not*

- Hide arrears of work.
- Destroy and/or misuse official papers.
- Abuse flexible working arrangements.
- Abuse the sick absence rules, or
- Misuse official vehicles, telephones, stationery etc.

When we suspect dishonesty we will always take action under our disciplinary procedures. This may lead to dismissal and, in some cases, prosecution for a criminal offence.

We are currently developing new procedures for HMRC. In the meantime please use the existing procedures.

Disciplinary Procedures (IR)
Disciplinary Procedure (C&E)

Impartiality in dealing with customers

Our customers have a right to expect to be dealt with impartially and without bias or prejudice. You must treat everyone you deal with as part of your work, courteously, fairly, honestly and sympathetically and in line with the department's Charters and Service Standards.

You are expected to help the public to fulfil their obligations and to obtain their rights. This means that you must not

- Do anything which would deny customers any reliefs, allowances, contributions or benefits which are rightfully due.
- Give customers any reliefs, allowances, contributions or benefits to which they are not entitled, or otherwise improperly reduce what they owe.
- Demand or receive a fee or reward of any kind for assistance or information given to the public on official matters either within or outside the office; or

- Obtain any personal advantage or benefit through your official relationship with customers.

Internal Anti-Fraud policy

The maintenance of high standards of behaviour, a culture of honesty and integrity and its reputation are important priorities for HMRC.

We aim to minimise the risk of internal fraud corruption, inappropriate or dishonest behaviour by taking steps to prevent it, detect it, investigate it, impose sanctions where necessary and to recover any financial loss recover.

We all need to take responsibility for the prevention of wrongdoing and the maintenance of high standards of behaviour. You must:

- Be alert to the possibility that unusual transaction or behaviour could be indicators of fraud or wrongdoing in the workplace.
- Take appropriate action or report to managers as a matter of urgency any concerns, risks or breaches of conduct or security that you have identified.

RCHRG3.10 - Misconduct

HMRC information is not yet available.

Former C&E users please refer to [xxxxx](#) (add hyperlink) for current guidance.

Former IR users please refer to Conduct and Discipline (add hyperlink to TG9 and the *Manager's Guide to Conduct and Discipline* for current guidance.

RCHRG3.11 Private conduct

You must not to do anything in your private conduct that might discredit the Department. You must tell your manager if you are arrested or become the subject of criminal proceedings. You must also tell your manager of any financial or other personal circumstances that could affect the way you carry out your official duties.

- *Main principles.*
- *Reporting criminal offences.*
- *Managing your private financial affairs.*
- *Bankruptcy and insolvency.*
- *Foreign travel.*

Main principles

In your private affairs in general, and your private financial transactions in particular, you must avoid any conduct or behaviour, which would

- Reflect poorly on you as an HMRC employee.
- Bring HMRC into disrepute.
- Give grounds for suspecting dishonesty or abuse of trust; or
- Involve the use of official information, for example, knowledge of departmental tolerances, to secure a financial advantage.

Reporting criminal offences

If you are involved in any criminal offence you must report the facts immediately to your manager, as well as the outcome of any subsequent proceedings. For example, if you are arrested, receive a formal police caution or become the subject of criminal proceedings either on or off duty.

If you are convicted of a criminal offence, receive a formal caution, or an administration penalty under the Social Security Administration (Fraud) Act 1997 your suitability as an employee of HMRC is called into question and you may be dismissed or subject to other disciplinary action.

You are not required to report a traffic offence committed in a purely private capacity unless it results in a recordable offence by the police, for example, disqualification from driving and / or imprisonment. However, you must tell your manager about any traffic offences involving an official vehicle or a private vehicle which you were using on official duties.



You must also tell your manager if you have criminal proceedings taken against you by a member of the public or you are charged with an alleged offence under a law for which HMRC is responsible, for example, smuggling, VAT, benefit or tax fraud.

For more information see HMRC Alcohol and Drugs Policy [add hyperlink] (*LR this does not seem to fit here*).

Managing your private financial affairs

We expect you to

- Manage your private financial affairs properly.
- File all tax returns and make tax payments on time.

You are strongly discouraged from entering into private financial transactions with colleagues, for example, making loans or acting as security for other members of staff. You must not put pressure on colleagues to lend money. If you enter voluntarily into permissible private financial transactions with members of HMRC you do so at your own risk and you must ensure your private arrangements do not have an adverse affect on the work of HMRC and its reputation.

You must not attempt to borrow money from members of the public with whom you have contact through your official duties or ask them to act as a guarantor for you for the purposes of a loan.

If you get into financial difficulties you may want to discuss your position with a member of the *Business & People Support team*.

You must tell your senior manager if you become subject to an *Attachment of Earnings order (Earnings Arrestment in Scotland)*.

Bankruptcy and Insolvency

If you become bankrupt or insolvent or give notice of your intention to declare yourself bankrupt, you must tell your manager immediately and provide a detailed statement of the circumstances.

Unlike bankruptcy, there is no legal definition of insolvency and it is generally accepted that a person who is unable to meet their current debts is "insolvent". However, for the purpose of this instruction you are only required to tell your manager if you have severe financial difficulties and there is little or no prospect in the foreseeable future that you will be able to meet your current debts. Temporary financial embarrassment need not be reported.

We will allow you to remain in post unless there is reason to believe that public moneys have been or are likely to be involved in which case you will be suspended from duty. If any dishonest or discreditable conduct on your part comes to light, you will be dismissed.

If you are bankrupt or insolvent, you will not be allowed to carry out any cash-related duties.

The situation and progress of any legal proceedings will be kept under review by your manager.

Foreign travel

The nature of your job may mean there is the possibility of an increased threat from criminal and terrorist organisations. Particular threats may be posed from certain countries and if you are in any doubt, you should contact the Departmental Security Unit who supply leaflets offering advice and guidance about travel in the former Soviet Union and China. For further information see

Departmental Security Unit - Advice for Travellers Overseas (IR)

Departmental Security Unit - Travel Abroad (C&E)

If you experience any unusual incidents whilst travelling abroad you must tell your manager and the Departmental Security Unit.

RCHRG3.11.1 Outside work

If you want to do other work, either while you are still employed by HMRC, or afterwards, you must comply with special rules that govern what you can and cannot do.

- *Main principles.*
- *Taking on other work.*
- *Work you cannot do.*
- *Use of official premises and facilities.*

- *Complaints about your outside work.*
- *Jury service.*
- *Undertaking voluntary public service appointments.*
- *Service with the reserve forces.*

Main principles

This section covers the rules on taking work outside HMRC while you are still working for us and within the first two years after leaving HMRC. You must also read the Working Time Regulations about 'people who have more than one job'

Working Time Regulations (IR)

Working Time Regulations and related policies (C&E)

These rules have been drawn up to ensure that

- What you do while you are employed by us is not in any way influenced by the possibility of future work with a particular firm or organisation.
- You are not at risk of breaching our confidentiality rules by providing an outside employer with confidential information about their competitors to which you have had access, or
- There is no conflict of interest between your HMRC and outside work.

Taking on other work (secondary employment)

You will need permission from your senior manager, through your manager, before becoming involved with outside business activities or accepting most types of other paid work while you are still working for us. You will need permission if

- You accept other paid work of any kind (the only exception is temporary seasonal work which will last less than three months provided it does not have connections with HMRC and does not conflict with the interests of the Department).
- You set up in business on your own account or in a partnership or accept a directorship in a business.

General principles

You will not be permitted to take outside work which

- Is, or could be, inconsistent with your position as an employee of HMRC or as a civil servant.
- Would require your attendance at any time which would conflict with your official hours of duty as set out in the terms and conditions of your employment.

Under these rules there is certain outside work that you will not be allowed to do under any circumstances (see below).

You must tell your manager immediately of any changes in circumstances that may affect the permission you have been given.

Work you cannot do

While you are employed by HMRC you must not take a job or do any work (whether paid or unpaid)

- Acting as an income tax agent, taxation adviser, bookkeeper or accountant.
- Dealing with PAYE, National Insurance Contributions, VAT and Excise Duty.
- Preparing accounts for the purpose of determining tax and NIC liabilities.
- Preparing any kind of return or declaration which is to be sent to HMRC except in connection with your own personal or business affairs, but not your family's.
- Which involves Social Security payments e.g. as a sub-postmaster.
- As a representative of an appellant or a customer during their appeal or action against HMRC.
- As an insurance agent, or in the provision of financial services.
- As a credit investigator, money lender, or debt collector.
- In a commercial Call Centre involving debt management, debt collection, credit investigation, money lending, insurance or financial services.



Nor can you work

- As a contractor working for or providing services to the Department, or as a Director of a Company or member of a partnership which does so (except where you have reported your interest to senior manager who has given permission for you to do so).
- For any business, as an employee or Director, which already holds a contract with the Department, except as a Government nominee.

You must not

- Become involved in the negotiation or arbitration of any matter affecting a contract, purchase or sale, to or with HMRC, if in your private capacity you have an interest, either as a principal or as a shareholder in the business involved, or
- Buy from, or sell to HMRC, any items without the express authority of a senior manager.

Various other part-time occupations may also be inconsistent with your HMRC employment because of individual factors, for example, if you are handling or could handle the business affairs of an employer's competitors.

Use of official premises and facilities

You must not use official premises, facilities or computers in connection with any outside work. This policy and guidance overrides any other policy or guidance where there is a conflict or potential conflict.

Complaints about your outside work

If a member of the public complains about your outside work we reserve the right to tell you to give up the work if the complaint is found to be justified.

We will also tell you to terminate your outside work if you do anything that might bring discredit to HMRC in any way.

Work or business activities you propose to take up in the first two years of leaving HMRC

You have certain obligations if you take up work or within the first two years after leaving HMRC. These are set out at

Rules on the acceptance of outside appointments by Crown Servants - (IR)

Rules on the acceptance of Outside Appointments by Crown Servants (C&E)

If approval is needed, you must submit the completed *form* to your manager *before* you are due to begin the new job.

These rules are there to ensure that you do not face a conflict of interest and cause problems for yourself or HMRC.

Jury Service

Jury Service is a public duty for the majority of citizens. However, the nature of the duties of some staff in HMRC may limit their liability to serve. The restrictions and procedures are explained in

Jury service - advice for staff (C&E)

Jury Service (IR) [add hyperlink to TG4.20]

Undertaking voluntary public service appointments

If you are invited to hold office as a Magistrate or wish to undertake other voluntary public service appointments or sign up as a special constable, you must apply to your senior manager for permission before accepting. Unless there is a potential conflict between your work in HMRC and your official activities, your senior manager will grant permission.

If you become a magistrate

- You must not act as a magistrate in connection with any proceedings directly or indirectly connected with HMRC.
- You must arrange, as far as possible, for your magisterial duties (other than attendance at Court) not to interfere with your official duties. This excludes training periods for newly appointed Magistrates. To apply for special leave to carry out your public duties see.

Paid special leave (IR)

Special leave (C&E)

Service with the Reserve forces

Although staff are encouraged to join, you must get permission from your manager if you

- Wish to enrol in the reserve forces.
- Extend such an engagement, or
- Enter into a fresh one with any of the Reserve forces including the Territorial and Army Volunteer Reserve and Royal Irish Regiment.

If you are already a member before you start working for us you must tell your manager. Permission is not required to join the Cadet forces, but you must notify your manager as soon as you join.

Paid special leave (IR)
Special leave (C&E)

RCHRG3.11.2 Political activities

There are restrictions on the political activities that you can undertake. You must not take part in any political activities, which compromise or may be seen to compromise, your impartial service to HMRC.

- *Main principles.*
- *Political activities.*
- *Political activities that may be subject to restriction.*
- *Review of approvals and appeals against refusal to grant permission to take part in political activities.*
- *Standards of conduct when taking part in political, parish, or similar council activities.*
- *Membership of local authorities.*
- *Parish or community councils.*
- *Standing for parliament.*

Main Principles

As an HMRC employee you are, under the terms and conditions of your employment, subject to certain rules regarding your political activities. These rules follow the principle that, as a civil servant, you are required to loyally serve the Government of the day and successive Governments of different political persuasions. It is essential that Ministers and the public can be confident that your personal views do not influence or interfere in any way with your official duties.

The rules

- Are primarily concerned with activities which may lead to you expressing political views in public.
- Are not concerned with your privately held beliefs and opinions; and
- Do not prohibit you from membership of any political party.

The intention is to allow you the greatest possible freedom to participate in public affairs while at the same time ensuring that there is no conflict with your work.

Political activities

The political activities you can undertake depend on whether you are employed in

- *The politically free group*
- *The intermediate group*
- *The politically restricted group.*

Whichever group you are in, you can take part in the activities of a parish council community council or any equivalent council, without prior authority.

If the group you are in changes following a temporary or permanent move of job or grade, you will become subject to the rules of your new group. So, if you take part in political activities, you must notify your manager if 6

- You move out of the politically free group
- You move from the intermediate to the restricted group.



You must give up any political activities that you are not permitted to do in your new post.

If you receive temporary promotion your group will be that of the higher post.

Political activities that may be subject to restriction

At national level these are

- Adoption as a Parliamentary candidate.
- Holding office in party political organisations concerned wholly or mainly with national party politics.
- Speaking in public on matters of national political controversy.
- Expressing views on such matters in letters to the Press or in books, articles or leaflets.
- Canvassing on behalf of a Parliamentary candidate or political party.

At local level these are

- Candidacy for, or co-option to a local authority.
- Holding office, in party political organisations, concerned wholly or mainly with local party politics.
- Speaking in public on matters of local political controversy.
- Expressing views on such matters in letters to the Press or in books, articles or leaflets.
- Canvassing on behalf of candidates for election to local authorities or a local political organisation.

The politically free group

This includes all staff in non-clerical jobs - such as messengers, security guards, telephonists etc.

If you are in this group you are completely free to engage in all political activities at national and local level.

The intermediate group

This includes all staff not within the politically free or politically restricted group.

If you are in this group you must ask permission from your manager to take part in local or national political activities and comply with any conditions imposed.

Permission will depend on:

- Whether you are involved with certain sensitive work areas, for example, policy assistance to Ministers.
- The degree and nature of your contact with the public; and
- The extent to which it is likely to become known, through your political activities, that you are a civil servant taking decisions affecting the general public.

The politically restricted group

This includes all Senior Civil Servants [SCS] and those in Grades 6 and 7, plus members of the Fast Stream Development Programme. If you are in this group you are completely barred from national political activities, but you can request permission to take part in local politics. Approval will depend on the criteria for the intermediate group.

Review of approvals and appeals against refusal to grant permission to take part in political activities

Review of approvals

We can review individual permission to take part in political activities at any time and without prior notice. You must request fresh approval from your manager if you wish to alter or extend your political activity to any area for which you did not previously have permission for.

You will receive a full explanation if you not given permission.

Appeals

You can appeal to the Civil Service Appeal Board (CSAB) [add internet link] against HMRC's refusal to grant you permission to take part in political activities. You must appeal within 8 weeks of being notified of the decision.

You can also appeal against the decision prior to lodging an appeal with the CSAB using

Resolving problems (IR)
Grievance and Appeals (C&E).

Standards of conduct

Intermediate and Restricted Groups

If you are not in the politically free group you must not allow the expression of your personal political views to constitute so strong and so comprehensive a commitment to one political party as to inhibit or appear to inhibit impartial and effective service to Ministers of another party. In particular

- Any comments made should be expressed with moderation and discretion, particularly in relation to government policy and matters for which either HMRC or Treasury Ministers are responsible.
- Avoid comment altogether about matters of controversy affecting the responsibility of either HMRC or Treasury Ministers.
- Avoid personal attacks.
- Every care should be taken to avoid any embarrassment to Ministers or to the department. This could happen if you bring yourself prominently to public notice in any party political controversy, particularly where it is known, or becomes known, that you are a civil servant or work for HMRC.
- You must always be discreet in matters of politically controversy so your impartiality is beyond question.

All staff

- You must not take part in any political activity when on duty, in uniform or on official premises.
- In your official capacity you must not attend conferences or functions convened by or under the sponsorship of a party- political organisation.

Union Officials

If you are a *union official*, you can comment on Government policy when you are representing the legitimate interests of your members. You must make it clear that you are expressing views as a representative of your union and not as a civil servant.

Membership of Local Authorities

If you are in the politically free group or have permission to take part in local activities, you must tell your manager if you are elected to a local authority. If at anytime following your election, you propose to take on responsibilities, which give rise to a conflict of interest with your official duties or the responsibilities of HMRC, you must tell your manager and comply with any conditions that we may impose.

Parish, Community or similar Councils

The only restriction on participation is if your official duties bring you into close contact with these councils, or their interests. In these circumstances you must tell your manager who will advise you on how to proceed.

Standing for Parliament

If you wish to stand for Parliament or the European Assembly, you are bound by the following rules.

The politically free group

- You need not resign, if you are adopted as a candidate. But you must resign as soon as you agree to be nominated for a particular seat - if you do not, your election would be void.
- You may be granted up to 1 month's unpaid special leave at the time of the election, but the unpaid special leave cannot extend beyond the date of your resignation.

If you are not elected

- You will be reinstated in your previous pay band / grade, providing you apply within 1 week of the declaration day.



- You will not be paid during your break from employment.
- Your time off will not count for pension purposes.

If you are elected and become a Member of Parliament, a Member of the Scottish Parliament or a Member of the European Assembly

- You will be entitled to reinstatement to your pay band/ grade provided that.
 - You cease to be a Member after an absence of 5 years or less; and
 - You had 10 years or more of actual service before election; and
 - You apply for reinstatement within 3 months of ceasing to be a Member.

Applications for reinstatement when the first two of these conditions are not satisfied will be considered on their merits.

The intermediate and politically restricted groups

You cannot stand for election while you are employed by HMRC. This means that you cannot

- Issue an address to electors, or
- Announce yourself in any other way (or allow yourself to be announced) as a candidate or prospective candidate by any political party.

If you are to be adopted as a candidate you must

- Resign from the HMRC; and
- Complete your last day of service before your adoption papers are finalised.

If the adoption process does not allow you enough time to give the required period of notice, you will be paid an amount equivalent to the balance of the period of notice.

There is no automatic right to reinstatement.

RCHRG3.12 Reporting concerns

If you believe that you are being required to act in a way that is inconsistent with the Civil Service Code [\[add hyperlink\]](#) or are required to act in a way that for you raises a fundamental issue of conscience, you should report your concerns. You should also report evidence of criminal or unlawful activity, or breaches of the Code by others.

If you believe that a decision or action affecting your employment is unfair, and the matter cannot be resolved informally, you have the right to make a formal grievance.

- *Main principles.*
- *Reporting concerns of malpractice and wrongdoing by others (Whistleblowing).*
- *Involving others if you are unhappy about management decisions.*

Main principles

We encourage everyone in HMRC and other workers to raise genuine and legitimate concerns internally without fear of reprisal or victimisation.

As well as providing an opportunity to examine your concerns and to take appropriate action with a view to resolving the matter, it also helps detect and discourage serious malpractice.

Reporting concerns of malpractice and wrongdoing by others in HMRC - (Whistleblowing)

The procedures are there to promote responsible whistleblowing about possible wrongdoing in HMRC.

- You should report the matter if you believe that you are being required to act in a way, or someone else is being treated in way, which is
 - Illegal.
 - Improper.
 - Unethical.
 - In breach of constitutional convention or a professional code.

- Otherwise inconsistent with the Civil Service Code or.
- May involve possible misadministration.
- If you have evidence of criminal or unlawful activity by others.
- If you have evidence of actions by HMRC which could be a danger to the public or the environment, or if you have serious concerns about the conduct of colleagues or contract workers.

The procedures are *not* intended to deal with issues about decisions or actions affecting your employment within HMRC that you think are unfair. These should be raised and addressed through the *grievance* procedure.

For further information see

Resolving problems (IR)
Grievance and Appeals (C&E).

The procedures - Who they apply to

The procedures apply to all employees irrespective of the nature of your contract. They also apply to other individuals who perform work for HMRC, for example, agency workers or those on work experience.

Reporting Concerns

You should speak directly to your manager about your concerns. However, if you feel unable to do so you must use the following procedures

Whistleblowing (IR)
Procedure tables (C&E).

Whatever you say will be treated in strict confidence although, if we need to take criminal or disciplinary proceedings (or both) we may need you to sign a statement or give evidence.

Your concerns will always be taken seriously and investigated and you should not be afraid to tell us about them. You will not be victimised for expressing genuine concerns even if they turn out to be unfounded. The Public Interest Disclosure Act 1998 ensures that you are able to disclose such suspicions without fear of reprisals or victimisation.

If you have exhausted the internal procedures but you still feel that HMRC has not given a reasonable response to your concerns, you may refer the matter to the Civil Service Commissioners.

Remember, if the matter you want to refer to the Commissioners concerns HMRC dealings with a particular customer you must make sure that your appeal does not infringe your legal obligations to keep customer or other official information confidential.

Involving others if you are unhappy about management decisions

If you are unhappy about management decisions you should use the appeals procedures available to you. For example, you can raise your concerns with your managers, either directly or through your union. If appropriate you should use the grievance and appeals procedures in

Resolving problems (IR)
Grievance and Appeals (C&E).

You should not disclose anything about HMRC's business outside the Department without permission. There are special rules if you are a union official.

For further information see

[Link back to the section on confidentiality in this guidance the other links can come from there]

You must not attempt to bring any political or other outside influence to bear on decisions affecting you as a civil servant, for example, to obtain special treatment which is not available to others. However, this prohibition does not

- override any statutory or other rights of appeal.
- Stop you from getting legitimate help from your Trade Union or other advisers on any matters affecting your employment.
- Restrict your constitutional right to approach your Member of Parliament (though the normal rules on disclosure, including in relation to the HMRC's business will still apply).



F. CODE OF PRACTICE HM REVENUE&CUSTOMS ON THE DISCLOSURE OF INFORMATION

CODE OF PRACTICE OF HMRC ON THE DISCLOSURE OF INFORMATION

Contents

Chapter 1	Introduction 1
Chapter 2	Legal Provisions 3
Chapter 3	Safeguards 6
Chapter 4	Complaints Handling 11
Appendix 1	Sections 19 and 20 Anti-Terrorism, Crime and Security Act 2001
Appendix 2	Article 8 of Schedule 1, Human Rights Act 1998 17
Appendix 3	Data Protection Principles 18
Appendix 4	Data Protection Statements 19

Chapter 1. Introduction

Purpose of the Code

1. The Anti-Terrorism, Crime and Security Act 2001 introduced provisions, at sections 19 and 20, which enable the Inland Revenue and HM Customs and Excise (referred to in the rest of this document as “the Revenue Departments”) to disclose information for the purposes of assisting criminal investigations or proceedings whether in the United Kingdom or abroad, including whether these investigations or proceedings should be initiated or brought to an end. Section 19 also allows the Revenue Departments to disclose information to the intelligence services for the purposes of carrying out any of those services' functions.

2. This is the Revenue Departments' Code of Practice for the disclosure of information under these provisions. It came into effect on 11 February 2002.

3. The Code explains the law as it affects the disclosure of information, under the Act, by the Revenue Departments, and describes the controls and safeguards that are in place to ensure that these disclosures conform to the law. It also sets out what action can be taken if a person has a complaint arising out of a disclosure of information under the Act.

4. The purpose of this Code is to set out the broad principles which will guide the way in which the Revenue Departments will disclose information under the provisions in the Act. The Revenue Departments will draw not only on the Code but also on other internal guidance and procedures which are in place to ensure that our legal obligations are met in full.

Who is the Code for?

5. This Code is intended as a guide for the staff of both Revenue Departments as to the broad principles which apply to these disclosures of information. Staff of both Departments must have regard to this Code as well as other internal guidance and procedures when disclosing information under the provisions in the Act. It is also intended to inform members of the public about how the information disclosure provisions will be used.

Which organisations are covered by the Code?

6. The provisions apply to any information held by the Commissioners of Inland Revenue or by the Commissioners of Customs and Excise, and to any information held on behalf of those Commissioners. This Code of Practice therefore applies to all staff of the Inland Revenue and HM Customs and Excise, and to anyone who holds information on behalf of either or both of the Revenue Departments.

Where can I find out more?

7. If you need further information about the Code or about the way in which the information disclosure provisions will be used, please contact:

Inland Revenue
Cross Cutting Policy
West Wing, Somerset House
Strand, London WC2R 1LB
E-mail: ccp.disclosure@ir.gsi.gov.uk

HM Customs and Excise
Parliamentary & Legislative Unit
5th Floor West, New King's Beam House
22 Upper Ground, London SE1 9PJ
E-mail: dpa.foi.pg@hmce.gsi.gov.uk

8. *This Code of Practice has no statutory force. It gives general guidance only and is not intended to be a full and authoritative statement or interpretation of the law.*

Chapter 2. Legal Provisions

What do the provisions do?

1. The Revenue Departments have a strict legal obligation to maintain the confidentiality of the information they hold. Prior to the information disclosure provisions in the Act, they could only disclose information to the law enforcement bodies in very limited circumstances. These disclosure provisions allow the Inland Revenue and HM Customs and Excise to disclose confidential information for the purposes of assisting criminal investigations or proceedings whether in the United Kingdom or abroad, including whether these investigations or proceedings should be initiated or brought to an end. They also allow the Revenue Departments to disclose information to the intelligence services for the purposes of carrying out any of those services' functions.

2. The criminal investigation and proceedings provisions are counterparts of existing provisions which allow, for example, the National Criminal Intelligence Service (NCIS) and the police, to provide information to the Revenue Departments for the purposes of criminal investigations and criminal proceedings. They therefore allow for reciprocal flows of information.

3. Confidential information which is held by the Revenue Departments may be disclosed under the provisions in the Act. This includes information which may be held on their behalf by persons providing services to them such as, for example, information technology contractors. Information obtained by the Revenue Departments before the provisions came into force may also be disclosed.

4. Confidential information which is held by the Revenue Departments or by persons providing services to them may be disclosed for the purposes of:

- Facilitating the carrying out by any of the intelligence services of any of that service's functions.
- Any criminal investigation which is being or may be carried out, whether in the United Kingdom or abroad.
- Any criminal proceedings which have been or may be initiated, whether in the United Kingdom or abroad.
- The initiation or bringing to an end of any such investigation or proceedings; or - facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

Who will the Revenue Departments disclose to?

5. The criminal investigation and proceedings provisions do not specify the organisations to which disclosure of confidential information can be made. However, because the provisions define the purposes of disclosure, they can only be made to organisations which have a legitimate interest in, and are capable of carrying out, criminal investigations or bringing proceedings for criminal offences, or both. In practice, this means that the majority of disclosures by the Revenue Departments are likely to be made to the police, the National Criminal Intelligence Service and the National Crime Squad. In relation to the intelligence services provisions, disclosure can only be made to organisations defined as intelligence services in the Regulation of Investigatory Powers Act 2000.

6. Where confidential information may be disclosed, the Revenue Departments will put in place Memorandums of Understanding (MoU) with the recipient organisations which establish detailed procedures for the disclosure and receipt of confidential information.

Is disclosure of information mandatory?

7. The provisions allow the Revenue Departments to make disclosures of information but do not say that the disclosures *must* be made. So no organisation or person can demand the disclosure of information by the Revenue Departments as of right. The decision as to whether to release information will be the responsibility of the Revenue Department which holds the information.



Proportionality of disclosure

8. The Act imposes an obligation on the Revenue Departments to ensure the proportionality of each disclosure of information made under the provisions. The relevant Revenue Department, in making any disclosure, must be satisfied that such disclosure was proportionate to the purposes for which it was made.

Authorising disclosure

9. Information cannot be disclosed by the relevant Revenue Department except by, or with the authority of, their respective Commissioners i.e. members of the Board of the relevant Revenue Department. In practice, the Commissioners of each Revenue Department normally delegate, under their "care and management" powers, their authority to make disclosures of information to appropriate members of staff.

Onward disclosure of information by recipients

10. Organisations which receive information from the Revenue Departments under the criminal investigations and proceedings provisions cannot pass that information on to others except:

- With the consent of the relevant Revenue Department which initially disclosed the information; and then only.
- For the purposes of assisting criminal investigations or proceedings whether in the United Kingdom or abroad, including whether these investigations or proceedings should be initiated or brought to an end.

11. Furthermore, these organisations cannot disclose the information obtained under the criminal investigations and proceedings provisions to the intelligence services for the purposes of carrying out any of those services' functions. They can, however, disclose to the intelligence services for the purposes of assisting criminal investigations or proceedings whether in the United Kingdom or abroad, including whether these investigations or proceedings should be initiated or brought to an end.

12. The Revenue Departments can give their consent either in relation to a particular disclosure or in relation to disclosures made in particular circumstances.

Criminal conduct abroad

13. Section 20 makes it clear that any criminal conduct abroad in relation to which information is requested from the Revenue Departments must equate to criminal conduct under United Kingdom law before information can be disclosed abroad for the purposes of assisting criminal investigations or proceedings, including whether these investigations or proceedings should be initiated or brought to an end.

Review of the Act

14. Section 122 of the Anti-Terrorism, Crime and Security Act 2001 requires the Home Secretary to appoint a committee to conduct a review of the Act and report on its findings. The review and the report must be completed within 2 years of Royal Assent i.e. 2 years from 14 December 2001.

15. The information disclosure provisions at sections 19 and 20 of the Anti-Terrorism, Crime and Security Act 2001 are reproduced as Appendix 1.

Chapter 3. Safeguards

General

1. The Revenue Departments have considerable experience in the secure handling and exchange of confidential information with other public bodies. They already disclose information in a carefully controlled and regulated way through a number of existing disclosure of information provisions with other public bodies. Both Revenue Departments are very conscious of their duty to ensure that all disclosures of confidential information are in accordance with the law. To that end, there are strict legal and administrative safeguards in place.

Legal safeguards

2. The Inland Revenue has very strict rules on the confidentiality of information. It is legally obliged to keep customers' affairs completely confidential. Information can only be disclosed where legislative provisions permit the disclosure of information or where the customer involved has consented to the disclosure. The approach of HM Customs and Excise is similar, but disclosures may also be made where there is an overriding public interest in doing so.

3. All Inland Revenue staff are legally required by section 6 of the Taxes Management Act 1970 to sign a declaration of secrecy. Similarly, all HM Customs and Excise staff are legally required to sign a declaration of secrecy under the provisions of the Official Secrets Act 1989.

4. Furthermore, the staff of both Revenue Departments are bound by section 182 of Finance Act 1989. This makes any unauthorised disclosure of information by any member of staff of either Revenue Department a criminal offence. Conviction may lead to a fine, imprisonment for up to two years, or both. Exceptions to these rules arise only in very restricted circumstances, such as where there is lawful authority permitting disclosure of information.

5. The Anti-Terrorism, Crime and Security Act 2001 incorporates specific legal safeguards with respect to the disclosure of information provisions.

- The information disclosure provisions are permissive i.e. the Revenue Departments will have the power but not an obligation to disclose information. All disclosures will be evaluated based on the facts of each particular case to ensure that they conform to the provisions set out at sections 19 and 20.
- The provisions specifically set out the purposes for which the Revenue Departments will be permitted to provide information. They allow the Inland Revenue and HM Customs and Excise to disclose confidential information for the purposes of assisting criminal investigations or proceedings whether in the United Kingdom or abroad, including whether these investigations or proceedings should be initiated or brought to an end. They also allow the Revenue Departments to disclose information to the intelligence services for the purposes of carrying out any of those services' functions. Information cannot be disclosed for any other purposes.
- There is a legal obligation on the Revenue Departments to ensure that each disclosure of information made under the provisions is proportionate to the aim to be achieved by the disclosure. A very simple example may help to illustrate this safeguard. If the police were trying to establish the address of a potential suspect in a criminal investigation, it would not be proportionate for the particular Revenue Department to provide the police with detailed information about the individual's tax affairs. However, given that the cases may range from the very straightforward to the highly complex, it is not possible to establish clear and unambiguous criteria as to what counts as "proportionate" disclosure. This must depend on the facts of each particular case put to the relevant Revenue Department.
- Information cannot be disclosed by the relevant Revenue Department except by, or with the authority of, their respective Commissioners i.e. members of the Board of the relevant Revenue Department. Although in practice the Commissioners normally delegate their authority to make disclosures of information to appropriate members of staff.
- The provisions also clearly provide that the information disclosed by the Revenue Departments can only be used for specified purposes. The recipients cannot use the information for any other purposes.
- The recipients of information from the Revenue Departments will only be able to further disclose that information for the purposes set out in the provisions, and then only with the permission of the relevant Revenue Department.
- The Government has made a statement, under section 19(1)(a) of the Human Rights Act 1998, that the information disclosure provisions are compatible with the European Convention on Human Rights. Furthermore, as "public authorities" within the meaning of section 6 of the Human Rights Act 1998, the Revenue Departments are legally required to exercise the provisions in a way which is compatible with the European Convention on Human Rights. In particular, disclosures should only be made where the circumstances make the disclosure necessary and proportionate. This further strengthens the "proportionality" safeguard at section 19(3).
- The Revenue Departments are also legally required to comply with any limitations imposed by the Data Protection Act 1998.

Interaction between the Human Rights Act 1998 and the Data Protection Act 1998

6. The Revenue Departments are public authorities within the meaning of section 6 of the Human Rights Act 1998. This means that they will be legally required to exercise the information disclosure provisions in a way that is compatible with the European Convention on Human Rights. In order to comply with the Human Rights Act 1998, they must ensure that any disclosure is:

- Made for one of the purposes set out in the information disclosure provisions.



- Necessary for one of the purposes set out in Article 8 of Schedule 1 to the Human Rights Act 1998; and
- Proportionate to the purpose for which the information is required.

7. A disclosure must not be made unless all these requirements are satisfied. In all but the most exceptional cases, disclosures under these provisions will be made either by a public authority, to a public authority or between public authorities. Each of these public bodies must fulfill their legal obligations under the Human Rights Act 1998 to make disclosures only where it is necessary and proportionate. Article 8 of Schedule 1 to the Human Rights Act 1998 is reproduced as Appendix 2 to this Code.

8. Disclosures of information under the provisions in the Anti-Terrorism, Crime and Security Act 2001 must comply with the data protection principles and all other requirements of the Data Protection Act 1998. The eight data protection principles are reproduced as Appendix 3. The Data Protection Act 1998 also provides a framework for the disclosure of personal information, acting as a filter on what can be disclosed and requiring an assessment of the proportionality of disclosing the information. With respect to the disclosure of information overseas, the eighth data protection principle (Schedule 1, Part I) of the Data Protection Act 1998 provides that personal information is not to be transferred outside the European Economic Area¹ unless the country in question ensures an adequate level of protection for the rights and freedoms of people in relation to the processing of personal information about them.

1. The European Economic Area consists of the 15 member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom) and three out of the four European Free Trade Association (EFTA) countries, namely Norway, Iceland and Liechtenstein. Switzerland, while being a member of EFTA is not a party to the European Economic Area, having voted against membership in December 1992.

9. Taken together, the interaction between the Human Rights Act 1998 and the Data Protection Act 1998 will ensure that the disclosure of information either within the UK or overseas is not permitted in inappropriate cases. In effect, the Revenue Departments will not disclose information under these provisions to overseas jurisdictions which do not offer an adequate level of protection to that offered within the United Kingdom by the Data Protection Act 1998 and the Human Rights Act 1998.

Administrative safeguards

10. As mentioned earlier, both Revenue Departments have considerable experience in the secure handling and exchange of confidential information. In addition to the legal safeguards described above, there are a range of administrative safeguards in both Revenue Departments to ensure that disclosures are made in accordance with the law.

11. The Revenue Departments will negotiate Memoranda of Understanding (MoUs) with the police and other law enforcement bodies to ensure that disclosures of information take place in a controlled and regulated manner, and can be seen to be in accordance with the law. The proposed MoUs will include the following administrative safeguards.

- All potential recipients of information will have to demonstrate that they have a legitimate interest, and that the information requested is needed for the specific purposes set out in the information disclosure provisions.
- Information requests will be handled by authorised staff only.
- Requests for information and the respective responses will be in writing. This ensures that internal audit staff can verify compliance with the law and the security protocols for the exchange of information.
- Police and law enforcement bodies will be required to give undertakings that they will make all necessary arrangements to protect the confidentiality of the information disclosed to them under the provisions.

12. The Revenue Departments do not propose to authorise all their staff to disclose information under these provisions. We envisage that only limited numbers of staff will be authorised to disclose. All authorised officers will receive detailed training and guidance so that they are fully aware of the security protocols, conditions and safeguards necessary to operate the provisions fairly and lawfully. Furthermore, they will not disclose "bulk" information (batches of data matching certain criteria produced in response to a general request) to the police and other law enforcement bodies under these provisions. Disclosure of information will be on a case-by-case basis.

13. The Inland Revenue Liaison Unit in London currently handling the disclosure of information to the police under court production orders and under international agreements will be the primary handling point for disclosures under these provisions.

The Inland Revenue office in Cardiff handling the distribution of taxes information will deal with less substantial disclosures.

14. HM Customs and Excise law enforcement responsibilities include antismuggling operations which take place at ports and airports around the country.

Their National Co-ordination Unit based in London (until mid-May) and Ipswich (from mid-May) will act as the central clearing house for all disclosures by HM Customs and Excise.

15. In all cases, disclosures will be made only by staff who are appropriately trained, and are under the supervision of senior managers. 16. Both Departments have well-established and publicised complaints procedures. More information about the handling of complaints is contained in Chapter Four.

Chapter 4. Complaints Handling

Internal process

1. If you have a complaint arising out of a disclosure of information under the provisions in the Act, you will initially need to go through the internal complaints process for the relevant Revenue Department.

2. For the Inland Revenue, you should contact the officer in charge of your own Tax Office with the relevant details. If the officer cannot settle the complaint, you should contact the Inland Revenue Controller responsible for the area dealing with your tax affairs. Our leaflets IR120 '*You and the Inland Revenue*' tells you how to do that. It is available from any Tax Enquiry Centre or Tax Office. If the Controller does not settle your complaint to your satisfaction, you can ask the Adjudicator to look into it and recommend appropriate action.

3. In the case of HM Customs and Excise, you should first contact the office which made the disclosure and ask them to look into your complaint. You should also ask for a copy of our Notice 1000, '*Complaints and putting things right: our code of practice*'. This notice tells you about our procedures for handling complaints, and the standards which you can expect us to apply. If the office concerned does not resolve the complaint to your satisfaction you can refer the matter to the Adjudicator to look into it and recommend appropriate action.

The Adjudicator

4. The Adjudicator deals with complaints about the Inland Revenue, including the National Insurance Contributions Office and the Valuation Office Agency, and HM Customs & Excise. She acts as an independent and impartial referee where the department in question has not been able to satisfactorily resolve a complaint and her services are free.

The address is:

The Adjudicator's Office
Haymarket House
28 Haymarket
London SW1Y 4SP
Telephone: 020 7930 2292
Fax: 020 7930 2298.

The Parliamentary Commissioner for Administration

5. You can also take your complaint to the independent Parliamentary Commissioner for Administration. The Parliamentary Commissioner for Administration (or Parliamentary Ombudsman as he is commonly known) deals with complaints about maladministration by public bodies. Any complaint must be made via a Member of Parliament. The Ombudsman seeks to establish whether a public body has acted correctly and fairly in carrying out its interpretation of the law. Cases for investigation may include those where a public authority is alleged to have done something in the wrong way, done something they should not have done or failed to do something which they should have done. The Ombudsman can recommend a variety of remedies, including the payment of compensation to complainants and the revision, adherence to, or clarification, of administrative procedures. Further information can be obtained from:

The Office of the Parliamentary Commissioner for Administration
Millbank Tower
Millbank
London SW1P 4QP
Telephone: 020 7217 4163
Fax: 020 7217 4160.



The Information Commissioner

6. The Information Commissioner –formerly the Data Protection Commissioner– is an independent officer who reports directly to Parliament. The Commissioner's main duty under the Data Protection Act 1998 is to promote good practice. Steps which she may take to achieve this include:

- Promoting compliance with the principles of the Data Protection Act.
- Encouraging the development of codes of practice to help data users comply with these principles.
- Establishing and maintaining a register of data users and computer bureaux and making it publicly available.
- Considering requests for assessment, and
- Where appropriate, the Commissioner has powers under the Act to serve notices requiring information to be provided, to take enforcement action where the Act is not being complied with, to enter and inspect premises and to prosecute offenders.

7. Individuals are entitled to complain to the Commissioner if they believe that the Data Protection Act 1998 or their rights under the Act have been breached. The Commissioner's address is:

The Office of the Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Information Line: 01625 545745

8. Both Revenue Departments incorporate Data Protection statements on their major forms which seek information from living individuals. These Data Protection statements are reproduced as Appendix 4.

Appendix 1. Sections 19 & 20 Anti-Terrorism, Crime and Security Act 2001

Section 19: Disclosure of information held by revenue departments

(1) This section applies to information which is held by or on behalf of the Commissioners of Inland Revenue or by or on behalf of the Commissioners of Customs and Excise, including information obtained before the coming into force of this section.

(2) No obligation of secrecy imposed by statute or otherwise prevents the disclosure, in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made-

- (a) For the purpose of facilitating the carrying out by any of the intelligence services of any of that service's functions.
- (b) For the purposes of any criminal investigation whatever which is being or may be carried out, whether in the United Kingdom or elsewhere.
- (c) For the purposes of any criminal proceedings whatever which have been or may be initiated, whether in the United Kingdom or elsewhere.
- (d) For the purposes of the initiation or bringing to an end of any such investigation or proceedings; or
- (e) For the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

(3) No disclosure of information to which this section applies shall be made by virtue of this section unless the person by whom the disclosure is made is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Information to which this section applies shall not be disclosed by virtue of this section except by the Commissioners by or on whose behalf it is held or with their authority.

(5) Information obtained by means of a disclosure authorised by subsection (2) shall not be further disclosed except-

- (a) For a purpose mentioned in that subsection; and
- (b) With the consent of the Commissioners by whom or with whose authority it was initially disclosed; and information so obtained otherwise than by or on behalf of any of the intel-

ligence services shall not be further disclosed (with or without such consent) to any of those services, or to any person acting on behalf of any of those services, except for a purpose mentioned in paragraphs (b) to (e) of that subsection.

(6) A consent for the purposes of subsection (5) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(7) Nothing in this section authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act 1998 (c. 29).

(8) References in this section to information which is held on behalf of the Commissioners of Inland Revenue or of the Commissioners of Customs and Excise include references to information which-

(a) Is held by a person who provides services to the Commissioners of Inland Revenue or, as the case may be, to the Commissioners of Customs and Excise; and

(b) Is held by that person in connection with the provision of those services.

(9) In this section "intelligence service" has the same meaning as in the Regulation of Investigatory Powers Act 2000 (c. 23).

(10) Nothing in this section shall be taken to prejudice any power to disclose information which exists apart from this section.

Section 20: Interpretation of Part 3

(1) In this Part-

"criminal investigation" means an investigation of any criminal conduct, including an investigation of alleged or suspected criminal conduct and an investigation of whether criminal conduct has taken place;"information" includes-

(a) Documents; and

(b) In relation to a disclosure authorised by a provision to which section 17 applies, anything that falls to be treated as information for the purposes of that provision;

"public authority" has the same meaning as in section 6 of the Human Rights Act 1998 (c. 42); and

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30).

(2) Proceedings outside the United Kingdom shall not be taken to be criminal proceedings for the purposes of this Part unless the conduct with which the defendant in those proceedings is charged is criminal conduct or conduct which, to a substantial extent, consists of criminal conduct.

(3) In this section-

"conduct" includes acts, omissions and statements; and

"criminal conduct" means any conduct which-

(a) Constitutes one or more criminal offences under the law of a part of the United Kingdom; or

(b) Is, or corresponds to, conduct which, if it all took place in a particular part of the United Kingdom, would constitute one or more offences under the law of that part of the United Kingdom.

Appendix 2. Article 8 of Schedule 1, Human Rights Act 1998

Right to respect for private and family life

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Appendix 3. Data Protection Principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

(a) At least one of the conditions in Schedule 2 is met, and

(b) In the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.



2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

4. Personal data shall be accurate and, where necessary, kept up to date.

5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

6. Personal data shall be processed in accordance with the rights of data subjects under this Act.

7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Appendix 4. Data Protection Statements

Inland Revenue

The Inland Revenue is a Data Controller under the Data Protection Act. We hold information for the purposes of taxes, social security contributions, tax credits and certain other statutory functions as assigned by Parliament. The information we hold may be used for any of the Inland Revenue's functions.

We may get information about you from others or we may give information to them.

If we do, it will only be as the law permits, to

- Check accuracy of information.
- Prevent or detect crime.
- Protect public funds.

We may check information we receive about you with what is already in our records.

This can include information provided by you as well as by others such as other government departments and agencies and overseas tax authorities. We will not give information about you to anyone outside the Inland Revenue unless the law permits us to do so.

HM Customs and Excise

HM Customs and Excise collects information in order to administer the taxes for which it is responsible (such as VAT, insurance premium tax, excise duties, air passenger duty, landfill tax), and for detecting and preventing crime.

Where the law permits we may also get information about you from third parties, or give information to them, for example in order to check its accuracy, prevent or detect crime or protect public funds in other ways.

These third parties may include the police, other government departments and agencies.

3. PROPUESTA DE CÓDIGO DE BUEN GOBIERNO DE LA ADMINISTRACIÓN TRIBUTARIA DEL ESTADO

PREÁMBULO

No ha sido frecuente en la tradición de la Administración española el disponer de códigos éticos o de conducta con el sentido en que tal expresión ha sido clásicamente entendida en otros países, por excelencia en el mundo anglosajón. Sí lo ha sido desde luego apelar en positivo a determinados deberes de nuestros cargos y empleados públicos, como hacía por ejemplo el artículo 6 de la Constitución de 1812, al imponer a los españoles la obligación de ser “justos y benéficos”, o vienen haciendo desde hace decenios nuestras leyes administrativas; siguiendo esta estela, la Ley 6/1997, de 14 de abril proclama en su artículo 4 el “principio de servicio a los ciudadanos” como norte esencial de la actividad de la Administración. Mas falta en nuestra tradición esa idea de códigos éticos o de conducta que los identifica con elencos más o menos amplios de principios recopilados en aras de favorecer el acomodo de los cargos y empleados públicos a los mismos, con base, y aquí radica su más genuina especificidad, en una doble intención: la de la persuasión, que no disuasión, del cargo o empleado público, con vistas a convencerlo en su fuero interno acerca de la bondad intrínseca de los comportamientos que han de perseguirse; y la del incentivo, que no sanción, de manera que el cargo o empleado público se afane en el cumplimiento de sus deberes, no tanto por temor al castigo por infringirlos, cuanto por apego autónomo hacia los mismos. En efecto, en nuestro país, los deberes éticos de los cargos y empleados públicos, sin perjuicio de las aisladas apelaciones en positivo a los mismos a que hemos hecho referencia, han venido siendo tradicionalmente recogidos en normas de naturaleza jurídica en absoluto discutible (a diferencia del soft law encarnado por los códigos éticos), en consecuencia sazonadas por el rigor de la disuasión que en todo caso el Derecho conlleva, máxime en los casos en que, a resultas de su incumplimiento, es precisa la imposición de alguna sanción: así ha sucedido de hecho con aquellas disposiciones jurídicas más afines a los deberes de los agentes públicos, cuales son las relativas a las incompatibilidades, tanto de los cargos como de los empleados públicos españoles, unas y otras indefectiblemente acompañadas por sendos regímenes disciplinarios orientados a garantizar en último extremo su respeto.

Siendo todo ello cierto, no lo es empero menos que, si bien muy recientemente, España ha comenzado a incorporar a su ordenamiento códigos éticos o de conducta en el sentido recién mencionado, y ello tanto como consecuencia de los avances en esta materia de países especialmente señeros, como de iniciativas en el mismo sentido adoptadas por prestigiosos organismos internacionales (sobre todo, las Naciones Unidas, la OCDE o el Consejo de Europa), sin que pueda en modo alguno olvidarse la contribución en esa misma línea del “buen gobierno” de grandes actores privados a escala mundial o nacional. Éste es sin duda el caso del llamado Código de Buen Gobierno de los miembros del Gobierno y de los altos cargos de la Administración General del Estado, aprobado mediante Acuerdo del Consejo de Ministros de 18 de febrero de 2005, claramente inscrito en esta línea de acción. Y en este mismo contexto debe también citarse el Acuerdo del Consejo de Ministros de 25 de febrero de 2005, en cuanto ordena al Ministerio de Economía y Hacienda la elaboración de un código de buenas prácticas para las empresas públicas, que asuma las directrices sentadas en la materia por la OCDE, y al Ministerio de Administraciones Públicas la confección de un código de conducta para los funcionarios competentes en procesos de contratación pública. Tanto el Proyecto de Ley de Regulación de los Conflictos de Intereses de los miembros del Gobierno y de los altos cargos de la Administración General del Estado como el hoy por hoy sólo proyectado Estatuto Básico del Empleado Público alinearán sin duda sus principios éticos y de conducta, *mutatis mutandis* en lo que a los empleados públicos se refiere, con los previamente sentados en el citado Código de Buen Gobierno, de aplicación a los miembros del Gobierno y a los altos cargos de la Administración General del Estado.

Éste es pues el marco en el que se inserta el presente Código de Buen Gobierno de la Administración Tributaria del Estado, articulado en un Punto Primero “Ámbito de aplicación”, un Punto Segundo “Principios éticos y de conducta” y un Punto Tercero “Cumplimiento del Código”.

Primero. Ámbito de aplicación

1. El presente Código será de aplicación a la totalidad de los empleados públicos, ya sean funcionarios, ya personal laboral, al servicio de la Administración Tributaria del Estado.

2. Este Código no será de aplicación a los miembros del Gobierno o altos cargos responsables de la Administración Tributaria del Estado, respecto de quienes regirá el Código de Buen Gobierno de los miembros del Gobierno y de los altos cargos de la Administración General del Estado, aprobado mediante Acuerdo del Consejo de Ministros de 18 de febrero de 2005.

3. A los efectos del presente Código, se entenderá por Administración Tributaria del Estado la Agencia Estatal de Administración Tributaria y la Secretaría General de Hacienda, ambas dependientes de la Secretaría de Estado de Hacienda y Presupuestos.



Segundo. Principios éticos y de conducta

1. Servicio y confianza

Los empleados públicos al servicio de la Administración Tributaria del Estado actuarán en todo momento en exclusivo servicio de los ciudadanos y de los contribuyentes, siendo conscientes de que el origen de sus competencias y la legitimidad de su ejercicio radican en la confianza de los españoles.

2. Respeto a la Constitución y al principio de igualdad

Los empleados públicos al servicio de la Administración Tributaria del Estado desempeñarán sus funciones con pleno respeto a la Constitución y al resto del ordenamiento jurídico, en especial a la legislación aplicable en materia tributaria, evitando asimismo toda actuación que pueda producir discriminación por razón de nacimiento, raza, sexo, religión, opinión o cualquier otra condición o circunstancia personal o social.

3 Orientación estratégica al interés público

Con una orientación estratégica más que de detalle, los empleados públicos al servicio de la Administración Tributaria del Estado perseguirán el interés público en su actuación, al margen de cualquier otro factor exclusivamente favorable a situaciones personales, familiares, corporativas, clientelares o cualesquiera otras que puedan colisionar con este principio.

4. Lealtad a la institución y a los ciudadanos

Los empleados públicos al servicio de la Administración Tributaria del Estado se esforzarán por no confundir en su actuación el interés público con el específico interés de la Administración Tributaria del Estado, sin perjuicio de la debida lealtad a ésta.

5. Desviación de poder

Los empleados públicos al servicio de la Administración Tributaria del Estado ejercerán sus competencias en orden al concreto y determinado fin para el que fueron concebidas, evitando en todo caso la desviación de poder.

6. Imparcialidad y objetividad

Los empleados públicos al servicio de la Administración Tributaria del Estado adoptarán sus decisiones con objetividad, sin dispensar tratos de favor, privilegios o ventajas injustificadas, ni recibirlos por parte de personas físicas o jurídicas privadas o públicas. Asimismo, los empleados públicos al servicio de la Administración Tributaria del Estado actuarán con imparcialidad, absteniéndose de influir en la agilización o resolución de trámite o procedimiento administrativo sin justa causa y, en ningún caso, cuando ello suponga un privilegio en beneficio propio o de su entorno familiar y social inmediato o cuando suponga un menoscabo de los intereses de terceros.

7. Percepción de regalos, servicios o liberalidades

A) *Los empleados públicos al servicio de la Administración Tributaria del Estado rechazarán cualquier regalo, servicio en su favor o liberalidad que, por ir más allá de los usos sociales y de cortesía, pueda condicionar el desempeño de sus funciones, sin perjuicio de lo establecido en el Código Penal. Los obsequios de mayor significación de carácter institucional se incorporarán, previa declaración de su percepción por parte del empleado público, al patrimonio del Estado, en los términos previstos en la legislación sobre el Patrimonio de las Administraciones Públicas.*

B) *Los empleados públicos al servicio de la Administración Tributaria del Estado rechazarán en especial regalos, servicios en su favor o liberalidades repetidamente realizados por una misma persona física o jurídica.*

8. Integridad y conflictos de intereses

A) *Los empleados públicos al servicio de la Administración Tributaria del Estado evitarán contraer obligaciones económicas o de otro tipo con personas físicas o jurídicas, que impliquen el riesgo de plantear conflictos de intereses con su puesto público. A estos efectos, se entenderá que existe conflicto de intereses cuando los empleados públicos al servicio de la Administración Tributaria del Estado intervengan en decisiones relacionadas con asuntos en los que confluyan a la vez intereses de su puesto público e intereses privados, propios o de su entorno familiar y social directo.*

B) *Al hilo de un procedimiento en curso, los empleados públicos al servicio de la Administración Tributaria del Estado declararán, ante su inmediato superior, cualquier interés privado, propio o de su entorno familiar y social directo, que pudiera tener relevancia en el mismo.*

C) *De conformidad con lo dispuesto en la legislación sobre régimen jurídico de las Administraciones Públicas, los empleados públicos al servicio de la Administración Tributaria del Estado deberán abstenerse de tomar parte en aquellos procedimientos sobre los que tengan un interés privado, propio o de su entorno familiar y social directo.*

D) *Con carácter general, los empleados públicos al servicio de la Administración Tributaria del Estado respetarán en todo momento la legislación sobre incompatibilidades y conflictos de intereses que les sea aplicable.*

9. Actividades de lobby e influencia

A) *Con ocasión de sus contactos, bien con personas físicas o entidades dedicadas a actividades de lobby por cuenta de terceros, bien con personas o entidades directamente interesadas en la promoción de sus propios productos o servicios, los empleados públicos al servicio de la Administración Tributaria del Estado se abstendrán de toda conducta que contravenga lo dispuesto en el presente Código o en cualquier disposición legal.*

B) *En particular, los empleados públicos al servicio de la Administración Tributaria del Estado evitarán conceder acceso o tratamiento privilegiado a personas físicas o entidades dedicadas a actividades de lobby por cuenta de terceros, o a personas o entidades directamente interesadas en la promoción de sus propios productos o servicios. A estos efectos, se entenderá por acceso o tratamiento privilegiado aquél que implique una discriminación respecto del que el empleado público al servicio de la Administración Tributaria del Estado ordinariamente concede a cualquier otra persona o entidad que lo pretenda.*

10. Cortesía y respeto

A) *Los empleados públicos al servicio de la Administración Tributaria del Estado tratarán con cortesía, respeto y consideración a los contribuyentes. Este trato se hará extensivo a los superiores, compañeros y subordinados.*

B) *Los empleados públicos al servicio de la Administración Tributaria del Estado ejercerán sus funciones de modo razonable, estando en general tan dispuestos a reconocer los derechos del contribuyente como lo estén para proteger los intereses de la Administración.*

C) *En caso de que, en el ejercicio de sus funciones, un empleado público al servicio de la Administración Tributaria del Estado recibiera una propuesta de actuación contraria a los principios del presente Código procedente de un contribuyente, la relación con éste se interrumpirá de inmediato, debiendo el empleado público al servicio de la Administración Tributaria del Estado informar a su inmediato superior a la mayor brevedad posible, y evitando tratar del asunto sin necesidad con ninguna otra persona.*

Si la propuesta procediera de un superior, sea o no el inmediato, de un compañero o de un subordinado, el empleado público al servicio de la Administración Tributaria del Estado procederá de idéntico modo, si bien en este caso la información deberá ponerse en conocimiento de la Inspección General del Ministerio de Economía y Hacienda.

D) *Los empleados públicos al servicio de la Administración Tributaria del Estado se abstendrán de interferir en modo alguno en la vida privada de sus superiores, compañeros y subordinados.*

11. Veracidad

Los empleados públicos al servicio de la Administración Tributaria del Estado respetarán en toda circunstancia la verdad en el cumplimiento de sus funciones, evitando realizar declaraciones verbales o escritas falsas, o que induzcan a engaño, en materias de interés público, y ello tanto en sus relaciones con los contribuyentes como con sus superiores, compañeros o subordinados.

12. Accesibilidad y transparencia

Los empleados públicos al servicio de la Administración Tributaria del Estado desempeñarán sus funciones con accesibilidad y transparencia, proporcionando información al contribuyente en la mayor medida posible y facilitándole el acceso a la documentación administrativa a que tenga derecho.

13. Dedicación y diligencia

Sin perjuicio de la normativa administrativa de aplicación, los empleados públicos al servicio de la Administración Tributaria del Estado desarrollarán su trabajo con dedicación, diligencia y agilidad, contestando todos los escritos, solicitudes y reclamaciones que los contribuyentes realicen, en todo caso dentro de plazo, cuando éste existiera, y proporcionando los motivos que fundamenten la decisión que en su caso hayan adoptado.

14. Eficacia y profesionalidad

Los empleados públicos al servicio de la Administración Tributaria del Estado ejercerán sus funciones con eficacia y profesionalidad, cumpliendo asimismo con la jornada de trabajo legalmente establecida.



15. Obediencia con iniciativa

Como muestra de su respeto al principio constitucional de jerarquía administrativa, los empleados públicos al servicio de la Administración Tributaria del Estado cumplirán sus funciones con estricta obediencia a sus superiores, sin perjuicio de la necesaria iniciativa individual o colectiva en el desarrollo de su trabajo.

16. Entorno de trabajo armónico y éticamente sensible

Los empleados públicos al servicio de la Administración Tributaria del Estado colaborarán con sus superiores y compañeros en el cumplimiento del servicio y en la mejora de éste y de la organización, a fin de conseguir un entorno de trabajo armónico y éticamente sensible, en el que todos y cada uno de sus miembros puedan sentirse plenamente valorados en el ejercicio de sus funciones.

17. Responsabilidad

Los empleados públicos al servicio de la Administración Tributaria del Estado asumirán la responsabilidad de sus actuaciones ante sus superiores, sin derivarla hacia sus compañeros o subordinados sin causa objetiva.

18. Secreto, confidencialidad y reserva profesional

Sin perjuicio del Código Penal y de las obligaciones establecidas en la legislación sobre el personal al servicio de las Administraciones Públicas, los empleados públicos al servicio de la Administración Tributaria del Estado preservarán el adecuado nivel de sigilo sobre las materias legalmente clasificadas en la legislación sobre secretos oficiales que por razón de su cargo hubieran conocido. Sobre cualesquiera otras materias y también sin perjuicio de las mencionadas obligaciones legales, los empleados públicos al servicio de la Administración Tributaria del Estado guardarán la discreción necesaria para garantizar la eficacia en el servicio, así como los derechos o intereses de terceros.

19. Austeridad y eficiencia

En aras de los principios de austeridad y eficiencia en la prestación del servicio, los empleados públicos al servicio de la Administración Tributaria del Estado utilizarán los bienes públicos como si fueran propios, y de acuerdo exclusivamente con el interés público, evitando su uso en provecho privado, propio o de su entorno familiar y social directo.

Tercero. Cumplimiento del Código

1. Deber de familiaridad con el Código

El conocimiento y consiguiente cumplimiento de los principios contenidos en el presente Código será responsabilidad de todo empleado público al servicio de la Administración Tributaria del Estado, sin que su ignorancia pueda esgrimirse como motivo de incumplimiento.

2. Consecuencias del incumplimiento

En el supuesto de incumplimientos de los principios del código, y sin perjuicio de lo dispuesto en la normativa sobre régimen disciplinario del personal al servicio de las Administraciones Públicas, el Ministro de Economía y Hacienda, o por delegación suya el Secretario de Estado de Hacienda y Presupuestos, adoptarán las medidas que en función de las circunstancias estimen oportunas.

3. Contribución del empleado público al cumplimiento

Todo empleado público al servicio de la Administración Tributaria del Estado deberá contribuir al efectivo cumplimiento de los principios establecidos en el presente Código, mediante la consideración de los incumplimientos de que haya tenido conocimiento con la mayor seriedad, llegando en su caso a ponerlos en conocimiento de sus superiores inmediatos.

4. Informe sobre incumplimientos

Anualmente, el Ministro de Economía y Hacienda conocerá un informe elevado por el Secretario de Estado de Hacienda y Presupuestos sobre los eventuales incumplimientos de los principios de este Código, con el fin de analizar sus causas y proponer medidas que garanticen un mayor respeto en el futuro.

**DOCUMENTOS DE TRABAJO EDITADOS POR EL
INSTITUTO DE ESTUDIOS FISCALES**

2000

- 1/00 Ciudadanos, contribuyentes y expertos: Opiniones y actitudes fiscales de los españoles en 1999.
Autor: Área de Sociología Tributaria.
- 2/00 Los costes de cumplimiento en el IRPF 1998.
Autores: M.^a Luisa Delgado, Consuelo Díaz y Fernando Prats.
- 3/00 La imposición sobre hidrocarburos en España y en la Unión Europea.
Autores: Valentín Edo Hernández y Javier Rodríguez Luengo.

2001

- 1/01 Régimen fiscal de los seguros de vida individuales.
Autor: Ángel Esteban Paúl.
- 2/01 Ciudadanos, contribuyentes y expertos: Opiniones y actitudes fiscales de los españoles en 2000.
Autor: Área de Sociología Tributaria.
- 3/01 Inversiones españolas en el exterior. Medidas para evitar la doble imposición internacional en el Impuesto sobre Sociedades.
Autora: Amelia Maroto Sáez.
- 4/01 Ejercicios sobre competencia fiscal perjudicial en el seno de la Unión Europea y de la OCDE: Semejanzas y diferencias.
Autora: Ascensión Maldonado García-Verdugo.
- 5/01 Procesos de coordinación e integración de las Administraciones Tributarias y Aduaneras. Situación en los países iberoamericanos y propuestas de futuro.
Autores: Fernando Díaz Yubero y Raúl Junquera Valera.
- 6/01 La fiscalidad del comercio electrónico. Imposición directa.
Autor: José Antonio Rodríguez Ondarza.
- 7/01 Breve curso de introducción a la programación en Stata (6.0).
Autor: Sergi Jiménez-Martín.
- 8/01 Jurisprudencia del Tribunal de Luxemburgo e Impuesto sobre Sociedades.
Autor: Juan López Rodríguez.
- 9/01 Los convenios y tratados internacionales en materia de doble imposición.
Autor: José Antonio Bustos Buiza.
- 10/01 El consumo familiar de bienes y servicios públicos en España.
Autor: Subdirección General de Estudios Presupuestarios y del Gasto Público.
- 11/01 Fiscalidad de las transferencias de tecnología y jurisprudencia.
Autor: Néstor Carmona Fernández.
- 12/01 Tributación de la entidad de tenencia de valores extranjeros española y de sus socios.
Autora: Silvia López Ribas.
- 13/01 El profesor Flores de Lemus y los estudios de Hacienda Pública en España.
Autora: María José Aracil Fernández.
- 14/01 La nueva Ley General Tributaria: marco de aplicación de los tributos.
Autor: Javier Martín Fernández.
- 15/01 Principios jurídico-fiscales de la reforma del impuesto sobre la renta.
Autor: José Manuel Tejerizo López.
- 16/01 Tendencias actuales en materia de intercambio de información entre Administraciones Tributarias.
Autor: José Manuel Calderón Carrero.
- 17/01 El papel del profesor Fuentes Quintana en el avance de los estudios de Hacienda Pública en España.
Autora: María José Aracil Fernández.
- 18/01 Regímenes especiales de tributación para las pequeñas y medianas empresas en América Latina.
Autores: Raúl Félix Junquera Varela y Joaquín Pérez Huete.
- 19/01 Principios, derechos y garantías constitucionales del régimen sancionador tributario.
Autores: Varios autores.
- 20/01 Directiva sobre fiscalidad del ahorro. Estado del debate.
Autor: Francisco José Delmas González.
- 21/01 Régimen Jurídico de las consultas tributarias en derecho español y comparado.
Autor: Francisco D. Adame Martínez.
- 22/01 Medidas antielusión fiscal.
Autor: Eduardo Sanz Gadea.

- 23/01 La incidencia de la reforma del Impuesto sobre Sociedades según el tamaño de la empresa.
Autores: Antonio Martínez Arias, Elena Fernández Rodríguez y Santiago Álvarez García.
- 24/01 La asistencia mutua en materia de recaudación tributaria.
Autor: Francisco Alfredo García Prats.
- 25/01 El impacto de la reforma del IRPF en la presión fiscal indirecta. (Los costes de cumplimiento en el IRPF 1998 y 1999).
Autor: Área de Sociología Tributaria.

2002

- 1/02 Nueva posición de la OCDE en materia de paraísos fiscales.
Autora: Ascensión Maldonado García-Verdugo.
- 2/02 La tributación de las ganancias de capital en el IRPF: de dónde venimos y hacia dónde vamos.
Autor: Fernando Rodrigo Sauco.
- 3/02 A tax administration for a considered action at the crossroads of time.
Autora: M.^a Amparo Grau Ruiz.
- 4/02 Algunas consideraciones en torno a la interrelación entre los convenios de doble imposición y el derecho comunitario Europeo: ¿Hacia la "comunitarización" de los CDIs?
Autor: José Manuel Calderón Carrero.
- 5/02 La modificación del modelo de convenio de la OCDE para evitar la doble imposición internacional y prevenir la evasión fiscal. Interpretación y novedades de la versión del año 2000: la eliminación del artículo 14 sobre la tributación de los Servicios profesionales independientes y el remozado trato fiscal a las *partnerships*.
Autor: Fernando Serrano Antón.
- 6/02 Los convenios para evitar la doble imposición: análisis de sus ventajas e inconvenientes.
Autores: José María Vallejo Chamorro y Manuel Gutiérrez Lousa.
- 7/02 La Ley General de Estabilidad Presupuestaria y el procedimiento de aprobación de los presupuestos.
Autor: Andrés Jiménez Díaz.
- 8/02 IRPF y familia en España: Reflexiones ante la reforma.
Autor: Francisco J. Fernández Cabanillas.
- 9/02 Novedades en el Impuesto sobre Sociedades en el año 2002.
Autor: Manuel Santolaya Blay.
- 10/02 Un apunte sobre la fiscalidad en el comercio electrónico.
Autora: Amparo de Lara Pérez.
- 11/02 I Jornada metodológica "Jaime García Añoveros" sobre la metodología académica y la enseñanza del Derecho financiero y tributario.
Autores: Pedro Herrera Molina y Pablo Chico de la Cámara (coord.).
- 12/02 Estimación del capital público, capital privado y capital humano para la UE-15.
Autoras: M.^a Jesús Delgado Rodríguez e Inmaculada Álvarez Ayuso.
- 13/02 Líneas de Reforma del Impuesto de Sociedades en el contexto de la Unión Europea.
Autores: Santiago Álvarez García y Desiderio Romero Jordán.
- 14/02 Opiniones y actitudes fiscales de los españoles en 2001.
Autor: Área de Sociología Tributaria. Instituto de Estudios Fiscales.
- 15/02 Las medidas antielusión en los convenios de doble imposición y en la Fiscalidad internacional.
Autor: Abelardo Delgado Pacheco.
- 16/02 Brief report on direct an tax incentives for R&D investment in Spain.
Autores: Antonio Fonfría Mesa, Desiderio Romero Jordán y José Félix Sanz Sanz.
- 17/02 Evolución de la armonización comunitaria del Impuesto sobre Sociedades en materia contable y fiscal.
Autores: Elena Fernández Rodríguez y Santiago Álvarez García.
- 18/02 Transparencia Fiscal Internacional.
Autor: Eduardo Sanz Gadea.
- 19/02 La Directiva sobre fiscalidad del ahorro.
Autor: Francisco José Delmas González.
- 20A/02 Anuario Tributario de Jurisprudencia sistematizada y comentada 1999. TOMO I. Parte General. Volumen 1.
Autor: Instituto de Estudios Fiscales.
- 20B/02 Anuario Tributario de Jurisprudencia sistematizada y comentada 1999. TOMO I. Parte General. Volumen 2.
Autor: Instituto de Estudios Fiscales.
- 21A/02 Anuario Tributario de Jurisprudencia sistematizada y comentada 1999. TOMO II. Parte Especial. Volumen 1.
Autor: Instituto de Estudios Fiscales.
- 21B/02 Anuario Tributario de Jurisprudencia sistematizada y comentada 1999. TOMO II. Parte Especial. Volumen 2.
Autor: Instituto de Estudios Fiscales.
- 22/02 Medidas unilaterales para evitar la doble imposición internacional.
Autor: Rafael Cosín Ochaita.
- 23/02 Instrumentos de asistencia mutua en materia de intercambios de información (Impuestos Directos e IVA).
Autora: M.^a Dolores Bustamante Esquivias.
- 24/02 Algunos aspectos problemáticos en la fiscalidad de no residentes.
Autores: Néstor Carmona Fernández, Fernando Serrano Antón y José Antonio Bustos Buiza.

- 25/02 Derechos y garantías de los contribuyentes en Francia.
Autor: José María Tovillas Morán.
- 26/02 El Impuesto sobre Sociedades en la Unión Europea: Situación actual y rasgos básicos de su evolución en la última década.
Autora: Raquel Paredes Gómez.
- 27/02 Un paso más en la colaboración tributaria a través de la formación: el programa Fiscalis de la Unión Europea.
Autores: Javier Martín Fernández y M.^a Amparo Grau Ruiz.
- 28/02 El comercio electrónico internacional y la tributación directa: reparto de las potestades tributarias.
Autor: Javier González Carcedo.
- 29/02 La discrecionalidad en el derecho tributario: hacia la elaboración de una teoría del interés general.
Autora: Carmen Uriol Egido.
- 30/02 Reforma del Impuesto sobre Sociedades y de la tributación empresarial.
Autor: Emilio Albi Ibáñez.

2003

- 1/03 Incentivos fiscales y sociales a la incorporación de la mujer al mercado de trabajo.
Autora: Anabel Zárate Marco.
- 2/03 Contabilidad versus fiscalidad: situación actual y perspectivas de futuro en el marco del Libro Blanco de la contabilidad.
Autores: Elena Fernández Rodríguez, Antonio Martínez Arias y Santiago Álvarez García.
- 3/03 Aspectos metodológicos de la Economía y de la Hacienda Pública.
Autor: Desiderio Romero Jordán.
- 4/03 La enseñanza de la Economía: algunas reflexiones sobre la metodología y el control de la actividad docente.
Autor: Desiderio Romero Jordán.
- 5/03 Errores más frecuentes en la evaluación de políticas y proyectos.
Autores: Joan Pasqual Rocabert y Guadalupe Souto Nieves.
- 6/03 Traducciones al español de libros de Hacienda Pública (1767-1970).
Autoras: Rocío Sánchez Lissén y M.^a José Aracil Fernández.
- 7/03 Tributación de los productos financieros derivados.
Autor: Ángel Esteban Paúl.
- 8/03 Tarifas no uniformes: servicio de suministro doméstico de agua.
Autores: Santiago Álvarez García, Marián García Valiñas y Javier Suárez Pandiello.
- 9/03 ¿Mercado, reglas fiscales o coordinación? Una revisión de los mecanismos para contener el endeudamiento de los niveles inferiores de gobierno.
Autor: Roberto Fernández Llera.
- 10/03 Propuestas de introducción de técnicas de simplificación en el procedimiento sancionador tributario.
Autora: Ana María Juan Lozano.
- 11/03 La imposición propia como ingreso de la Hacienda autonómica en España.
Autores: Diego Gómez Díaz y Alfredo Iglesias Suárez.
- 12/03 Quince años de modelo dual de IRPF: Experiencias y efectos.
Autor: Fidel Picos Sánchez.
- 13/03 La medición del grado de discrecionalidad de las decisiones presupuestarias de las Comunidades Autónomas.
Autor: Ramón Barberán Ortí.
- 14/03 Aspectos más destacados de las Administraciones Tributarias avanzadas.
Autor: Fernando Díaz Yubero.
- 15/03 La fiscalidad del ahorro en la Unión Europea: entre la armonización fiscal y la competencia de los sistemas tributarios nacionales.
Autores: Santiago Álvarez García, María Luisa Fernández de Soto Blass y Ana Isabel González González.
- 16/03 Análisis estadístico de la litigiosidad en los Tribunales de Justicia. Jurisdicción contencioso-administrativa (período 1990/2000).
Autores: Eva Andrés Aucejo y Vicente Royuela Mora.
- 17/03 Incentivos fiscales a la investigación, desarrollo e innovación.
Autora: Paloma Tobes Portillo.
- 18/03 Modelo de Código Tributario Ambiental para América Latina.
Directores: Miguel Buñuel González y Pedro M. Herrera Molina.
- 19/03 Régimen fiscal de la sociedad europea.
Autores: Juan López Rodríguez y Pedro M. Herrera Molina.
- 20/03 Reflexiones en torno al debate del impacto económico de la regulación y los procesos institucionales para su reforma.
Autores: Anabel Zárate Marco y Jaime Vallés Giménez.
- 21/03 La medición de la equidad en la implementación de los sistemas impositivos.
Autores: Marta Pascual y José María Sarabia.
- 22/03 Análisis estadístico de la litigiosidad experimentada en el Tribunal Económico Administrativo Regional de Cataluña (1990-2000)
Autores: Eva Andrés Aucejo y Vicente Royuela Mora.

- 23/03 Incidencias de las NIIF en el ámbito de la contabilidad pública.
Autor: José Antonio Monzó Torrecillas.
- 24/03 El régimen de atribución de rentas tras la última reforma del Impuesto sobre la Renta de las Personas Físicas.
Autor: Domingo Carbajo Vasco.
- 25/03 Los grupos de empresas en España. Aspectos fiscales y estadísticos.
Autores: María Antonia Truyols Martí y Luis Esteban Barbado Miguel.
- 26/03 Metodología del Derecho Tributario.
Autor: Pedro Manuel Herrera Molina.
- 27/03 Estado actual y perspectivas de la tributación de los beneficios de las empresas en el marco de las iniciativas de la Comisión de la Unión Europea.
Autor: Eduardo Sanz Gadea.
- 28/03 Créditos iniciales y gastos de la Administración General del Estado. Indicadores de credibilidad y eficacia (1988-2001).
Autores: Ana Fuentes y Carmen Marcos.
- 29/03 La Base Imponible. Concepto y determinación de la Base Imponible. Bienes y derechos no contabilizados o no declarados: presunción de obtención de rentas. Revalorizaciones contables voluntarias. (Arts. 10, 140, 141 y 148 de la LIS.)
Autor: Alfonso Gota Losada.
- 30/03 La productividad en la Unión Europea, 1977-2002.
Autores: José Villaverde Castro y Blanca Sánchez-Robles.

2004

- 1/04 Estudio comparativo de los convenios suscritos por España respecto al Convenio Modelo de la OCDE.
Autor: Tomás Sánchez Fernández.
- 2/04 Hacienda Pública: enfoques y contenidos.
Autor: Santiago Álvarez García.
- 3/04 Los instrumentos de solidaridad interterritorial en el marco de la revisión de la política regional europea. Análisis de su actuación y propuestas de reforma.
Autor: Alfonso Utrilla de la Hoz.
- 4/04 Política fiscal en la Unión Europea: antecedentes, situación actual y planteamientos de futuro.
Autores: M.^a del Pilar Blanco Corral y Alfredo Iglesias Suárez.
- 5/04 El defensor del contribuyente, un estudio de derecho comparado: Italia y EEUU.
Autores: Eva Andrés Aucejo y José Andrés Rozas Valdés.
- 6/04 El Impuesto Especial sobre los Hidrocarburos y el Medio Ambiente.
Autor: Javier Rodríguez Luengo.
- 7/04 Gestión pública: organización de los tribunales y del despacho judicial.
Autor: Francisco J. Fernández Cabanillas.
- 8/04 Una aproximación al contenido de los conceptos de discriminación y restricción en el Derecho Comunitario.
Autora: Gabriela González García.
- 9/04 Los determinantes de la inmigración internacional en España: evidencia empírica 1991-1999.
Autor: Iván Moreno Torres.
- 10/04 Ética fiscal.
Coord.: Santiago Álvarez García y Pedro M. Herrera Molina.
- 11/04 Las normas antiparaiso fiscal españolas y su compatibilidad con el Derecho Comunitario: el caso específico de Malta y Chipre tras la adhesión a la Unión Europea.
Autores: José Manuel Calderón Carrero y Adolfo Martín Jiménez.
- 12/04 La articulación de la participación española en los organismos multilaterales de desarrollo con las políticas de comercio exterior.
Autor: Ángel Esteban Paul.
- 13/04 Tributación internacional de profesores y estudiantes.
Autor: Emilio Aguas Alcalde.
- 14/04 La convergencia entre contabilidad financiera pública y contabilidad nacional: una aproximación teórica con especial referencia a los criterios de valoración.
Autor: Manuel Pedro Rodríguez Bolívar.
- 15/04 Situación actual y perspectivas de futuro de los impuestos directos de la Unión Europea.
Autores: Juan José Rubio Guerrero y Begoña Barroso Castillo.
- 16/04 La ética en el diseño y aplicación de los sistemas tributarios.
Coord.: Santiago Álvarez García y Pedro M. Herrera Molina.
- 17/04 El sector público y la inversión en vivienda: la deducción por inversión en vivienda habitual en España.
Autores: Francisco Adame Martínez, José Ignacio Castillo Manzano y Lourdes López Valpuesta.
- 18/04 Discriminación fiscal de la familia a través del IRPF. Incidencia de la diversidad territorial en la desigualdad de tratamiento.
Autora: M. Carmen Moreno Moreno
- 19/04 Las aglomeraciones urbanas desde la perspectiva de la Hacienda Pública.
Autora: María Cadaval Sampedro.
- 20/04 La autonomía tributaria de las Comunidades Autónomas de régimen común.
Autores: Santiago Álvarez García, Antonio Aparicio Pérez y Ana Isabel González González.

- 21/04 Neutralidad del Impuesto sobre Sociedades español en el contexto europeo. Análisis del Informe "Fiscalidad de las empresas en el Mercado Interior (2001)".
Autora: Raquel Paredes Gómez.
- 22/04 El impuesto de Sociedades en la Europa de los veinticinco: un análisis comparado de las principales partidas.
Autores: José Félix Sanz, Desiderio Romero, Santiago Álvarez, Germán Chocarro y Yolanda Ubago.
- 23/04 La cooperación administrativa en la Unión Europea: el programa FISCALIS 2007.
Autor: Ernesto García Sobrino.
- 24/04 La financiación de las elecciones generales en España, 1977-2000.
Autores: Enrique García Viñuela y Joaquín Artés Caselles.
- 25/04 Análisis estadístico de la litigiosidad en los Tribunales Económico-Administrativos Regionales y Central.
Autores: Eva Andrés Aucejo y Vicente Royuela Mora.
- 26/04 La cláusula de procedimiento amistoso de los convenios para evitar la doble imposición internacional. La experiencia española y el Derecho comparado.
Autor: Fernando Serrano Antón.
- 27/04 Distribución de la renta y crecimiento.
Autor: Miguel Ángel Galindo Martín.
- 28/04 Evaluación de la efectividad de la política de cooperación en la innovación: revisión de la literatura.
Autores: Joost Heijs, Mikel Buesa, Liliana Herrera, Javier Sáiz Briones y Patricia Valadez.
- 29/04 Régimen fiscal del patrimonio protegido de los discapacitados.
Autor: Joaquín Pérez Huete.
- 30/04 La fiscalidad del seguro individual.
Autora: Roberta Poza Cid.

2005

- 1/05 La circulación de valores en Contabilidad Nacional: análisis de los elementos de los estados financieros desde un punto de vista conceptual.
Autor: Manuel Pedro Rodríguez Bolívar.
- 2/05 Comentarios al Reglamento de obligaciones de información respecto de participaciones preferentes y otros instrumentos de deuda y de determinadas rentas obtenidas por personas físicas residentes en la Unión Europea.
Autor: Francisco José Delmas González.
- 3/05 Presupuesto de la Unión Europea, impacto presupuestario de las ampliaciones y perspectivas financieras.
Autor: Juan Carlos Graciano Regalado.
- 4/05 La imposición sobre las actividades económicas en la Hacienda local a los 25 años de la Constitución.
Autor: Francisco Poveda Blanco.
- 5/05 Objetivos tecnológicos y de internacionalización de las políticas de apoyo a las PYME en Europa.
Autor: Antonio Fonfría Mesa.
- 6/05 Sector público y convergencia económica en la UE.
Autores: María Jesús Delgado Rodríguez e Inmaculada Álvarez Ayuso.
- 7/05 La tributación de las plusvalías en el ámbito europeo: una visión de síntesis.
Autor: Fernando Rodrigo Sauco.
- 8/05 El concepto de beneficiario efectivo en los convenios para evitar la doble imposición.
Autor: Félix Alberto Vega Borrego.
- 9/05 Los precios de transferencia: su tratamiento tributario desde una perspectiva europea.
Autor: Francisco Alfredo García Prats.
- 10/05 Comentarios a la Directiva del régimen fiscal de reorganizaciones empresariales.
Autor: Juan López Rodríguez.
- 11/05 Opiniones y actitudes fiscales de los españoles en 2004.
Autor: Área de Sociología Tributaria. Subdirección General de Estudios Tributarios. Instituto de Estudios Fiscales.
- 12/05 El debate de la financiación autonómica con los resultados del nuevo sistema en 2002.
Autor: Miguel Ángel García Díaz.
- 13/05 Medidas antielusión fiscal.
Autor: Eduardo Sanz Gadea.
- 14/05 Income taxation: a structure built on sand.
Autor: John Prebble.
- 15/05 La muestra de declarantes de IRPF de 2002: descripción general y principales magnitudes.
Autores: Fidel Picos Sánchez, María Antiquera Pérez, César Pérez López, Alfredo Moreno Sáez, Carmen Marcos García y Santiago Díaz de Sarralde Míguez.
- 16/05 La política presupuestaria de las Comunidades Autónomas.
Autores: Miguel Ángel García Díaz, Ana Herrero Alcalde y Alfonso Utrilla de la Hoz.
- 17/05 La deducción por reinversión de beneficios extraordinarios en inmovilizado financiero.
Autora: Nuria Puebla Agramunt.
- 18/05 Los Entes locales como sujetos pasivos del Impuesto sobre el Valor Añadido: una visión general.
Autor: Javier Martín Fernández.
- 19/05 El gravamen en el IRPF de las ganancias de patrimonio en España.
Autora: Cristina de León Cabeta.

- 20/05 La liquidación del sistema de financiación autonómico en 2003 y el sistema de entregas a cuenta.
Autor: Alfonso Utrilla de la Hoz.
- 21/05 Energy taxation in the European Union. Past negotiations and future perspectives.
Autor: Jacob Klok.
- 22/05 Medidas antiabuso en los convenios para evitar la doble imposición internacional.
Autora: Amelia Maroto Sáez.
- 23/05 La fiscalidad internacional del comercio electrónico.
Autor: Francisco José Nocete Correa.
- 24/05 La tributación de los sistemas de previsión social en el Impuesto sobre la Renta de las Personas Físicas.
Autora: Susana Bokobo Moiche.
- 25/05 Unidad o pluralidad de actos en el Impuesto sobre Actos Jurídicos Documentados: un análisis jurídico privado.
Autores: Iñaki Bilbao Estrada y Juan Carlos Santana Molina.
- 26/05 La relación entre el *cash flow* y la oferta monetaria: el caso de algunos países de la Unión Europea.
Autores: Miguel Angel Galindo Martín, Agustín Álvarez Herranz y María Teresa Méndez Picazo.
- 27/05 Una aproximación al sistema fiscal del antiguo régimen. La recaudación de tributos en ferias y mercados en Castilla en el siglo XVIII.
Autora: María del Mar López Pérez.
- 28/5 Naturaleza jurídica y efectos de las contestaciones a consultas tributarias.
Autor: Francisco D. Adame Martínez.
- 29/5 La educación fiscal en España.
Autoras: M.^a Luisa Delgado, Marta Fernández, Ascensión Maldonado, Concha Roldán y M.^a Luisa Valdenebro.
- 30/05 La tributación de las rentas del capital en el IRPF: gravamen dual o único.
Autor: Teodoro Cordón Ezquerro.

2006

- 1/06 El Impuesto sobre el Valor Añadido en el proceso urbanístico: un análisis a la luz de la jurisprudencia y la doctrina administrativa.
Autor: Jesús Rodríguez Márquez.
- 2/06 Principales características del gravamen del beneficio de la PYME en otros países de la Unión Europea.
Autora: Raquel Paredes Gómez.
- 3/06 Política fiscal y capital social.
Autora: María Soledad Castaño Martínez.
- 4/06 Panorámica de la Formación Continua en España.
Autora: María José Martín Rodrigo.
- 5/06 Alta dirección en la Administración Pública ¿Política de género? Buscando caminos.
Autoras: M.^a José Llombart Bosch, Milagro Montalvo Santamaría, Victoria Galera Vega y Ana Aguado Higón.
- 6/06 La influencia de la fiscalidad en las distintas formas de inversión bursátil. Informe.
Autor: César García Novoa.
- 7/06 Códigos de conducta en el orden tributario.
Autores: José A. Rozas Valdés, Montserrat Casanella Chuecos y Pablo García Mexía.