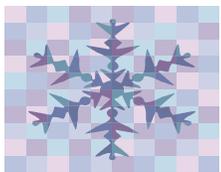


# ETHICS EXPRESS



U.S. DEPARTMENT OF THE INTERIOR

## DIRECTOR'S CORNER

In the First Edition of the "Ethics Express," I discussed Secretary Salazar's commitment to enhancing and promoting ethical culture throughout the Department of the Interior. As a result of his commitment, he has authorized all bureau directors or other appropriate senior executives to employ a full-time deputy ethics counselor properly classified at the GS-14 level or higher.



The bureau directors will also provide the deputy ethics counselors with adequate support staff as well as financial and technical resources to implement the ethics program.

These are necessary measures to ensure that deputy ethics counselors have the proper training and resources to oversee the day-to-day implementation of their bureau ethics programs by administering the financial disclosure system, conducting ethics training, and providing ethics counseling and advice to bureau employees.

In this issue we are highlighting several of our ethics counselors in order for you to become familiar with our great ethics team! For a complete listing of DOI Deputy Ethics Counselors, please visit our website at [www.doi.gov/ethics](http://www.doi.gov/ethics).

**THE ETHICS TEAM WISHES YOU HAPPY HOLIDAYS!**

ISSUE 2, DECEMBER 2, 2010

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## ETHICS PROGRAM AWARD

The Departmental Ethics Office (DEO) was honored when the Office of Government Ethics (OGE) presented us with the 2010 Ethics Program Award. This award was presented in recognition of our efforts in working to overcome challenges related to accountability and consistency in the DOI ethics program. The DEO reached out to OGE to help assess the performance of Interior's bureau ethics offices and to develop strategies to strengthen the agency's overall program. As a result of this partnership, consultations with other agencies, and the experience and leadership of Interior's own officials, the DEO prepared a comprehensive proposal to improve the overall performance and efficiency of the ethics program. The proposal evolved into Secretarial Order 3288. Among other things, the Secretarial Order established a clear chain of command and accountability throughout the agency's ethics program, created full time ethics positions to manage the administration of each bureau ethics program, and implemented internal controls to ensure consistency and efficiency agency-wide.



## *Post-Employment I: The “Geezer Act” and Returning to work as a Federal Employee*

The Departmental Ethics Office has received inquiries from employees and retirees about reemployment with the Department after they retire under the “Part-Time Reemployment of Annuitants Act of 2009” or, as it is sometimes called, the “Geezer Act.” The concern is whether returning to the Department as a retiree to work on the same or similar matters would violate post-employment rules. Although it is easy to see how there might be some confusion, reemployment with the Department as a government employee does not violate the post-employment rules under 18 USC 207.

The “Part-Time Reemployment of Annuitants Act of 2009” was introduced in the Senate on March 18, 2009. The bill (S. 629) is an attempt to mitigate the impending loss of thousands of Federal employees who are eligible for retirement. The bill provides limited authority for the head of an agency to waive the normal rule that when a Federal retiree is reemployed by the Federal Government, payment of an annuity or retirement is stopped. If enacted, the bill would permit a limited number of retirees to be rehired by the agency and receive both pay for the work they are doing and retired pay at the same time. This creates an incentive for some retirees to return to the Federal Government. It’s important to note that there are some significant limitations in the bill on how many retirees could be brought back to work and how much work or service could be performed by individual employees. While this bill remains in the Senate and has not become law, similar temporary provisions that permit annuitants to be rehired did become law in the National Defense Authorization Act (NDAA) of 2010. These provisions expire October 27, 2014. Department of the Interior interim policy implementing the NDAA provisions are established in Personnel Bulletin (Interim) Number 10-01 (<http://www.doi.gov/hrm/guidance/PB10-01.doc>).

As noted, this subject has generated questions about possible ethical concerns. As every retiree or former Federal employee should know, 18 USC 207(a) bans a former employee from communicating to or appearing on behalf of another entity back to the Federal Government on an official matter in which the former employee either participated personally and substantially (lifetime ban) or for which the former employee had official responsibility (2 year ban). The restrictions in 18 USC 207 do not bar post government employment, but do limit the communications to or appearances before the Federal Government. It is important to note that 18 USC 207 does not prohibit a former employee from representing himself before the United States (as distinguished from a corporation or consulting firm). Questions about post-employment activities frequently arise in the context of former employees who work for contractors or other non-Federal employers who want the former employee to work on projects related to work they did

for the government. Again, the law does not prohibit employment in these circumstances, but does limit how and when a former employee can communicate to or appear before the government on those official matters that they worked on when they were a Federal employee.

Employees and retirees with questions about the “Geezer Act” are concerned that the rules in 18 USC 207(a) regarding communications back to the government would apply if the retiree returned to their former agency as a Federal employee in the same way that it would apply if they worked for a contractor or other non-Federal entity. The good news is that the restrictions in 18 USC 207 do not apply to new employment as a Federal employee. It’s important to understand why. The ban in 18 USC 207(a) applies to communications or appearances made on behalf of another person or entity, other than the United States. As a result, if a retiree returns as a Federal employee, instead of a contractor employee, they are not communicating on behalf of another non-Federal entity, but are part of the Federal Government itself and are not communicating or appearing on the behalf of another entity. However, the analysis would be different if the retiree returned as a contractor employee, even if that contractor is doing work for a government agency, because in the case of employment by a contractor, the retiree is working on behalf of another entity (the contractor) and not the government, even if the contract work is done for the government.



## *Post-Employment II: Ethics issues if your job is outsourced after you leave Federal service*

An increasingly familiar scenario is that after an employee retires, the agency decides to hire a contractor to perform the work that had been done by the retiree. When this happens there are important ethical considerations that a retiring employee should be aware of if he might be interested in returning to do his job as a contractor.

The first concern is the employee’s involvement in preparing the statement of work for a new contract to replace the employee. It might seem logical to have a retiring or departing employee develop a statement of work for a contract to perform the same work the employee is currently performing. After all who knows the work better than the departing employee? In most instances, however, it is a conflict of interest for the employee to prepare the statement of work if he has any interest in doing the work himself. A similar concern exists with the preparation of evaluation or selection criteria for a new contractor or participation in the

selection process itself if the employee is interested in performing work under the new contract. All of these activities are likely to constitute a conflict of interest and could result in criminal prosecution under the Federal conflict of interest statute, 18 USC 208.

Both the departing employee and anyone involved in the decision to contract out the work should be sensitive to this potential conflict of interest and ensure the departing employee is recused from or kept out of the contracting process if he is interested in performing work under a contract in the future. While a departing employee knows whether he has any interest in doing the work and has an independent obligation to recuse himself from any involvement in a contract which he is interested in performing, the issue may come up in other ways. A departing employee may mention that he is interested in or willing to consider work as a contractor to a supervisor. A supervisor may ask whether the departing employee is interested in coming back to work as a contractor. In any of these scenarios, if the departing employee expresses an interest in coming back as a contractor, he should not be involved in any work on a new contract to perform some or all of his official duties. This is true even if a final decision has not been made on whether or not to execute a contract to do the work.

Another conflict of interest issue arises if an employee who is leaving government performs his duties in a way that improperly increases contract work to improve his chances of obtaining contract work after leaving government. For example, an employee might improperly generate an unusually high number of contract actions with intention of creating a great deal of contract work that he can perform as a contractor when he leaves government service. On the other hand, a departing employee might be intentionally unproductive so that there is a great deal of work that the government must contract out after he departs with the intention that he will perform that work in a contract status.

Employees, supervisors, and personnel working in contract administration concerned about a possible conflict of interest issue should request ethics advice to ensure any outsourcing decisions are properly executed.

Beyond the conflict of interest issue, departing employees must also be sensitive to the post-employment restrictions under 18 USC 207, if they desire to work as a contractor or contractor employee on matters related to their former official duties. The statute limits communications to or appearances before current Federal Government employees by a former employee on particular matters that the former employee was personally and substantially involved in or that fell under the former employee's official responsibilities. Retirees or any

employee leaving Federal Government service are strongly advised to seek an ethics opinion before accepting employment with a non-Federal entity that involves any communication with the Federal Government on any matters related to their prior official duties.



## *The Procurement Integrity Act (PIA)*

The Procurement Integrity Act, 41 USC § 423 contains four key provisions. It:

- (a) prohibits the improper disclosure of source selection information or contractor bid or proposal information;
- (b) prohibits the improper receipt of source selection information or contractor bid or proposal information;
- (c) requires Federal employees involved in procurements above the simplified acquisition threshold to take certain actions if they are contacted by a company that is an offeror in

the procurement about going to work for that company. They must promptly report the contact to their supervisor and the Designated Agency Ethics Official (or their designee) and then either reject the possibility of employment, OR disqualify himself or herself from further personal and substantial participation in the procurement until the agency has authorized the employee to resume participation in the procurement on the grounds that: (1) the company that the employment contact was with is no longer a bidder or offeror in the procurement, or (2) all discussions between the employee and the company regarding possible employment have terminated without an agreement for

employment.

- (d) prohibits employees served in who participated in the award of a contract in excess of \$10 million from accepting compensation from the company that was awarded the contract.

The provisions of the PIA are implemented in the Federal Acquisition Regulation (FAR) 3.104, Procurement Integrity, and in Department of the Interior Acquisition Regulation 1403 and 1415.608-70, Conflict of Interest.

Employees who control [contractor bid or proposal information](#) must provide proper security for the information. Employees who prepare or utilize [source selection information](#) must ensure that the information is marked as such, properly secured, and is only provided to those employees who have a "need to know."

Employees, supervisors, and personnel working in contract administration concerned about a possible conflict of interest issue should request ethics advice to ensure any outsourcing decisions are properly executed.

From "What You Need to Know as a Federal Employee Involved in the Procurement and Acquisition Process"  
[http://www.usoge.gov/training/training\\_materials/booklets/bk\\_procurementintegrity\\_07.txt](http://www.usoge.gov/training/training_materials/booklets/bk_procurementintegrity_07.txt)

Contractor or proposal information is:

- \* Cost or pricing data, including indirect costs and direct labor rates;
- \* Information about manufacturing processes, operations and techniques when marked "proprietary" in accordance with law or regulation;
- \* Information marked as "contractor bid or proposal information"; and
- \* Any other information related to a specific procurement that a company making a bid deems proprietary.

Source selection information is information not previously available to the public that is prepared for use by an agency in evaluating a bid or proposal, including:

- \* Bid prices for sealed bids or lists or prices;
- \* Proposed costs or prices;
- \* Source selection plans;
- \* Technical evaluation plans;
- \* Technical, cost or price evaluations of competing proposals;
- \* Competitive range determinations;
- \* Rankings of bids, proposals or competitors;
- \* Reports, evaluations and recommendations of source selection panels, boards or advisory councils; and
- \* Any other information marked as "source selection information."

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## Neptism and Related Matters



Recently, an employee, "Edwin," was promoted to a management position after demonstrating that he was the best qualified candidate. His resume was head and shoulders above his competition. He was seasoned and well-versed in the occupational role. In this new role, he was also his wife's second line supervisor. Edwin became concerned after assuming the supervisory role since he would be in a position to take official action on matters in which his wife had an

interest, which in all likelihood would result in a conflict of interest under 18 U.S.C. § 208.

The anti-nepotism statute bars public officials from appointing, employing or promoting their relatives. See 5 U.S.C. § 3110. However, not all Federal employees are public officials, within the meaning of the statute. A public official is one who has the authority to appoint, employ, promote, advance, or recommend individuals for appointment, employment, promotion, or advancement in the agency/bureau he or she serves. See 5 U.S.C. § 3110(a)(2).

Public officials are barred from recommending or advocating a relative for appointment, employment, promotion or advancement. See 5 C.F.R. §3110(b). This holds true even if the authority to appoint, employ, promote or advance is temporary in nature, such as in instances where an individual serves in a temporary assignment or in an *Acting* role for a public official. However, the anti-nepotism statute is not invoked unless a relative of the public official (or the Acting's relative) is placed in a Federal position.

The term relative, in the context of a public official, is broad and not limited to an individual's immediate family members. The term relative includes one's father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. See 5 U.S.C. § 3110(a)(3).

While it is entirely possible for spouses to work in the same office, it is problematic for one spouse to supervise the other. Moreover, it is also problematic for one spouse to hire the other spouse to work in the same agency/bureau/office or even recommend the other spouse for promotion or hire. In addition to the likelihood of violating the anti-nepotism statute, these actions may also violate the criminal conflict of interest statute. See 18 U.S.C. § 208. This statute prohibits an employee from participating in a bureau matter that will affect the employee's own personal financial interest or the financial interest of the employee's spouse or minor child.

The anti-nepotism statute applies to competitive and excepted service appointments. As such, the anti-nepotism statute applies to both Student Temporary Employment Program (STEP) and Student Career Experience Program (SCEP) program participants. However, it does not apply to volunteer appointments.

In the absence of a violation of the anti-nepotism statute or the conflict of interest statute, employees must be careful not to take official action on matters, in connection with the appointment, employment, or promotion of students, relatives or friends. This could violate the Standards of Conduct for Employees of the Executive Branch.

For example, employees may not use their public office for their own private gain or for the gain of relatives. See 5 C.F.R. § 2635.702. In addition, employees may not take official action on matters that are likely to affect the interests of members of their households or relatives with whom the employee shares a close personal relationship. See 5 C.F.R. § 2635.502(b)(1)(ii). Moreover, employees are not permitted to use their Government position, title, or any authority associated with their office in a manner that is intended to coerce or induce another person, including a subordinate, to provide a benefit to himself or a relative. See 5 C.F.R. § 2635.702(a).

Under certain circumstances, the Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be in violation of the anti-nepotism statute. See 5 C.F.R. § 310.102. However, such appointments are temporary and may not exceed 30 days, but the agency may extend such an appointment for one additional 30-day period if the emergency still exists at the time of the extension.

A relative hired in violation of the anti-nepotism statute is not entitled to pay or compensation. In addition, any monies paid to the relative who was appointed, employed, promoted, advanced, or recommended for employment in violation of the anti-nepotism statute must be paid back to the agency/bureau. Lastly, the personnel action must be cancelled immediately.

The public official who recommends, advocates, employs, advances, or promotes his or her relative is subject to appropriate disciplinary action. Consider these actual cases reviewed by the Office of Special Counsel (OSC):

- Employees of the Social Security Administration’s Hearing Office, alleged that an applicant was selected for a supervisory GS-13 position because she was related to the Hearing Office Director. OSC’s investigation revealed that the Hearing Office Director had recommended to the selecting official that the Director’s first cousin be selected for a supervisory position in the office. (The Director was suspended for five days.)
- Allegations surfaced that the Regional Personnel Director for the Defense Commissary Agency engaged in nepotism. In addition to other allegations of violations of law, the Regional Personnel Director advocated for and advanced the promotion of her husband through upgrading his position and completing the paperwork that lead to his promotion. (OSC petitioned for her removal from Federal employment.)



## Bureau Highlights

### New Ethics Officials

Maintaining high ethical standards is essential to fostering the public’s trust. That is why it is imperative that employees seek assistance from authorized ethics officials prior to engaging in any activity that may create even the appearance of impropriety in their work.

One key aspect of Secretarial Order 3288, is to hire ethics counselors at a GS -14 level or higher who have solid working knowledge of the Federal and Departmental ethics statutes and regulations.

With that said, we would like to introduce our newest additions to the DOI ethics family.



**Sharon Limberhand** is the Deputy Ethics Counselor for the Bureau of Indian Affairs, Bureau of Indian Education and Assistant Secretary – Indian Affairs. She has 39 years of government service in positions such as Tribal Operations Specialist; Administrative Officer; Acting Superintendent; Position Classification Specialist; and Human Resources Officer. She is the mother to four children, ages 40, 32, 14 and 10, and “grandma” to two. Her interests/hobbies include attending her children/grandchildren’s school activities, tending to her Boston Terrier, and going to the movies. She is also an avid collector of everything from Christmas and Halloween paraphernalia to Indian arts and jewelry.



**Anne Badgley** assumed the duties of Deputy Ethics Counselor for the U.S. Fish and Wildlife Service in February 2010. Anne has held a variety of positions in government including five years as the Regional Director for the FWS’s Pacific Region. Prior to joining the FWS, Anne worked for the National Park Service and practiced law in Washington, DC. Most recently, she has been leading a project for the Fish and Wildlife Service to build capacity in collaborative problem solving and governance. This project has been conducted in partnership with the U.S. Institute for Environmental Conflict Resolution (part of the Udall Foundation in Tucson, Arizona) and the Policy Consensus Initiative (headquartered at Portland State University.) Anne has a Bachelor’s of Science degree from the University of Washington and a Master’s degree in Business from UCLA.

She received her law degree from the University of Washington, where she was the Editor-in-Chief of the Law Review. She lives in Portland with her husband and two children.



**Scott Currie** has been working in the Departmental Ethics Office since February 2, 2009. A native of Michigan, and life-long Detroit Tigers fan, Scott attended law school at Michigan State University. In addition to working at DOI, his legal experience includes working in the Michigan Attorney General's State Operations Division in Lansing, MI, the U.S. Air Force General Counsel's Division of Fiscal and Administrative Law at the Pentagon, the U.S. Army Materiel Command's Office of the Command Counsel at Ft. Belvoir, and volunteering for the D.C. Volunteer Lawyers Project.



**Larissa Taran** comes to the Office of Inspector General from the U.S. Postal Service, Office of General Counsel where she worked for 18 years – first as a labor employment attorney and, more recently, as Ethics Counsel. Born and raised in New York, Larissa graduated from the New York University School of Law in 1987. Following graduation, she joined the law firm of Cullen and Dykman, where she specialized in labor law. Larissa relocated to Washington, DC in 1989 and continued practicing labor law with the Washington, D.C. office of Morgan, Lewis & Bockius before starting her government career with USPS. She will serve as OIG's Deputy Ethics Counselor.



**Craig W. Clark** has recently been selected to be the Deputy Ethics Counselor (DEC) for Bureau of Reclamation. Craig recently served as DEC for Office of Surface Mining, Reclamation and Enforcement. Craig was born in Denver, Colorado; and was raised in Arapahoe County, Colorado. In August of 1999 he received his Bachelor of Arts Degree in History and English from the University of Colorado – Boulder. He then received his Juris Doctorate from the University of Colorado School of Law in May of 2003 and is licensed to practice law in the State of Colorado. Craig was commissioned as a Second Lieutenant in the USMC Reserve in August of 2002. From 2003 until 2007 Craig served on active duty in the USMC aboard Marine Corps Recruit Depot San Diego and continues to serve in the USMC Reserve. While in the USMC and USMC Reserve, Craig served as a Defense Counsel, Prosecuting Attorney, Civil Law

Attorney, Legal Assistance Attorney and Officer in Charge of the Marine Corps Recruit Depot's Tax Center.

From 2007 until 2010 he served as the Chief Executive Officer of PacificPillows.com. Craig is married to Abigail Clark and has three children Caroline (2), Meredith (2), and William (1).



**Rich Grant** is the new Ethics Program Manager for the National Park Service. Previous to his employment with NPS, he was on active duty in the Marine Corps for 22 years and retired on June 1st of this year at the rank of Lieutenant Colonel.

In his last assignment in the Marine Corps, he was the Head of Research and Civil Law Division, Office of the Staff Judge Advocate to the Commandant of the Marine Corps at the Pentagon, from 2006 to 2010. Prior to that he was the Deputy Staff Judge, Multi-National Force Iraq, Baghdad, from June 2005 to June 2006. Prior to that he was Deputy Legal Counsel to the Chairman of the Joint Chiefs of Staff, also at the Pentagon, from 2003 to 2005. He held numerous other positions in the Marine Corps and was also stationed at Quantico, Virginia; Kaneohe Bay Hawaii; Okinawa, Japan; and Camp Lejeune, North Carolina.

He was born in Buffalo, New York, and received a B.A. from The Ohio State University in 1984, with majors in political science and criminology. He also received a J.D. from The Ohio State University School of Law, with Honors, in 1987 and an LL.M from The Army Judge Advocate General's School in 1994.

His interests include whatever his 12 year old son wants to do, including paintball and camping.

### **Ethics Training**

The Departmental Ethics Office (DEO) created an ethics outreach program to increase the visibility of the DEO and bureau ethics programs. The program included an overview of outreach opportunities offered by the DEO such as town hall visits, publications, ethics training, and liaison with the ethics community. The purpose of this outreach is to give our office an opportunity to discuss recent changes to the ethics program, while giving employees in the field an opportunity to share their ideas on how our office can be more responsive and accessible.

In addition to the town hall meetings, we:

- Visited bureau facilities and employees to discuss ethics on a personal level and to help provide us with context so that we can deliver better ethics advice to employees in the field;
- Met with management to determine what services our office could provide that would be useful to regional office management;
- Met with field ethics employees to provide assistance and training and to offer advice to improve the operation of the Bureau ethics program.

The events were well received and attended. They provided insightful information that will assist the ethics program in the future.

<p><b>Training dates:</b></p> <p>Departmental Ethics Office</p> <p><b>Reminder:</b> Decemeber 31, 2010, is the deadline for annual ethics training for financial disclosure filers.</p> <p>If you have not yet received training, the Novemember 2, 2010, satellite broadcast featuring Ed Ruggero is available at:  <a href="http://oneinterior.doi.net/oneinterior/Multimedia/video/ethics_conf_video_101102.cfm">http://oneinterior.doi.net/oneinterior/Multimedia/video/ethics_conf_video_101102.cfm</a></p> <p>If you experience difficulties accessing the site, please contact your IT team.</p> <p style="text-align: center;">OSM</p> <p>December 8 – Pittsburg, PA (AR)</p> <p style="text-align: center;">Washington, DC – South Interior Building</p> <p>December 14 – Rm. 220 – 2-3:30pm</p>
<p>NPS announces the release of its ethics on-line training modules in DOI Learn. These modules can be found in the catalog by querying "NPS Ethics."</p> <p>Currently, these modules are only available to employees who are on an NPS server. Any questions should be directed to WASO Ethics Office at 202-354-1981.</p>

**U.S DEPARTMENT OF THE INTERIOR**

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