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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Guidance on Detailees Between Agencies and Need for Agency Coordination

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to provide guidance on the application of certain ethics rules and regulations to executive branch employees who are serving on detail at another executive branch agency¹ (“detailees”).² Specifically, OGE is clarifying that (1) for details in excess of 30 days, the receiving agency’s supplemental regulations, rather than those of the home agency, apply to the detailee; (2) references to “agency” and “official duties” in the Standards of Ethical Conduct for Employees of the Executive Branch (“the Standards”)³ apply to both the home and receiving agencies; (3) with one exception, a detailee usually files their financial disclosure report with their home agency; and (4) a detailee’s home agency remains responsible for ensuring the detailee receives their required ethics training, which may be fulfilled through appropriate training at the receiving agency.⁴

Generally, ensuring the appropriate application of the ethics rules and regulations to a detailee will require coordination between the detailee’s home agency and receiving agency. To assist in coordination between home and receiving agencies, OGE has attached a job aid to serve as a reference guide to the conclusions and best practices described below.

¹ The guidance in this Legal Advisory is specific to executive branch employees serving on detail to other executive branch agencies. For guidance on the application of the ethics rules to detailees under the Intergovernmental Personnel Act, see OGE DAE Ogram DO-06-031 (Oct. 19, 2006).

² Although there is no statutory definition of what constitutes a detail, it is generally understood to be “the temporary assignment of an employee to a different position for a specified period, with the employee returning to regular duties at the end of the detail.” See, e.g., OFF. OF PERS. MGMT., GUIDE TO PROCESSING PERSONNEL ACTIONS, at 35-4 (Mar. 2017), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/#url=Personnel-Actions>; Application of 18 U.S.C. § 207 to Former CIA Offs.’ Commc’ns with CIA Emps. on Detail to Other Agencies, 31 Op. O.L.C. 248, 251 (2007).

³ 5 C.F.R. part 2635.

⁴ Note that the interpretations discussed in this Legal Advisory are intended to apply only to the regulations at 5 C.F.R. parts 2634, 2635, and 2638, and no other laws, rules, or regulations. Guidance regarding the application of the post-employment rules to detailees can be found at 5 C.F.R. part 2641. However, part 2641 is not addressed in this Advisory.



I. Applying the Standards of Conduct to Detailees

A. Agency Supplemental Regulations

The Standards address the application of agency supplemental regulations to detailees at 5 C.F.R. § 2635.104(a). This provision provides that a detailee, “including a uniformed officer on assignment, from [their] 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 [they are] detailed rather than to any supplemental agency regulations of [their] employing agency.”⁵ As explained in the preamble to the final rule, OGE declined to apply the supplemental regulations of both the receiving agency and the home agency to detailees “[b]ecause of the confusion that could result from different, and possibly inconsistent, requirements in two agencies’ supplemental regulations.”⁶ Accordingly, only the supplemental regulations of the receiving agency apply to detailees on detail longer than 30 days.

B. The Standards of Conduct

With the exception of agency supplemental regulations, the Standards do not specifically address detailees between executive branch agencies. The provisions of the Standards are intended to apply uniformly to all executive branch employees. However, certain provisions of the Standards will apply differently depending on an employee’s agency or official duties.⁷ Because the concerns addressed by the Standards are relevant to a detailee’s positions with both their home and receiving agencies, OGE has determined that the application of the Standards to detailees should be based on both of those positions.⁸ Therefore, a detailee is expected to continue to adhere to the Standards in the same manner as any other employee of their home agency and as though they were an employee of the receiving agency as well.

⁵ Agencies should note, however, that an employee on detail “who is subject to an agency statute which restricts [their] activities or financial holdings specifically because of [their] status as an employee of that agency shall continue to be subject to any provisions in the supplemental agency regulations of [their] employing agency that implement that statute.” 5 C.F.R. § 2635.104(d). For example, members of the military who are detailed to a civilian agency within the executive branch continue to be subject to the Uniform Code of Military Justice under this provision.

⁶ See 57 Fed. Reg. 35006, 35009 (Aug. 7, 1992). In implementing the Standards, OGE explained that “[u]nless it would violate a statutory restriction, any problem posed by an employee’s investment activities while on detail can be readily remedied by divestiture when the employee returns to [their] regular duties.” *Id.*

⁷ For instance, there are references to an employee’s relevant “agency” throughout the Standards. See, e.g., 5 C.F.R. § 2635.203(d) (defining “prohibited source” as any person seeking official action by, doing business with, or conducting activities regulated by “the employee’s agency”); *id.* § 2635.204(g) (requiring authorization by “the agency designee” and determination of “agency interest” to permit free attendance at a widely-attended gathering); *id.* § 2635.502(c). Similarly, the term “official duties” occurs throughout the Standards. See, e.g., *id.* § 2635.203(d) (defining “prohibited source” as persons with interests that “may be substantially affected by the performance or nonperformance of the employee’s official duties”); *id.* pt. 2635, subpt. E (“Impartiality in Performing Official Duties”); *id.* § 2635.802 (“An employee shall not engage in outside employment or any other outside activity that conflicts with [their] official duties.”).

⁸ A detailee’s official duties could include matters assigned at their home agency as well as their receiving agency. Generally speaking, an employee’s official duties are those that are part of their job. See OGE Inf. Adv. Op. 94x8, at 2 (Feb. 23, 1994); OGE Inf. Adv. Op. 88x14 (Oct. 21, 1988). As such, it is important that agencies consult with one another to ensure the appropriate application of the Standards to a detailee.

Example 1: Detailee is assigned to a particular matter at their receiving agency which involves Company X. Detailee's cousin, with whom they have a close personal relationship, is a clerk at Company X and may be involved in administrative tasks relating to the matter. Detailee's home agency has no connection with this particular matter or Company X. The ethics official at the receiving agency reviews the facts of the matter and the cousin's involvement, and determines Detailee's impartiality is not likely to be questioned, pursuant to 5 C.F.R. § 2635.502(c). Because the home agency has no connection to this particular matter, the ethics official at the receiving agency determines it is not necessary to consult with the home agency on this issue.⁹

Example 2: Detailee is offered an annual subscription to a mechanical engineering journal, valued at \$200, from a trade organization that is a prohibited source at their home agency. The trade organization is not a prohibited source at their receiving agency, nor was the gift given due to Detailee's official position at the receiving agency. Detailee's home agency reviews the facts of the gift and determines in writing that Detailee may accept the gift pursuant to 5 C.F.R. § 2635.204(m). Because the trade organization is not a prohibited source at the receiving agency and the gift was not given due to Detailee's position with the receiving agency, the home agency ethics official determines it is not necessary to consult with the receiving agency on this issue.¹⁰

Example 3: A prestigious U.S. university wishes to give an honorary degree to Detailee. The university does business with both Detailee's home agency and receiving agency. The ethics officials at the home and receiving agencies confer and determine that, due to Detailee's involvement in an ongoing matter involving the university, the award of the degree could cause a reasonable person to question Detailee's impartiality in a matter affecting the university. As such, Detailee is informed that acceptance of the degree is not permissible under 5 C.F.R. § 2635.204(d)(3).

C. Best Practices for Home and Receiving Agencies

OGE recognizes that agencies may encounter situations where the application of the Standards to a detailee is unclear due to the overlapping ethics requirements at a detailee's home and receiving agencies. Therefore, ethics officials may need to facilitate coordination between home and receiving agencies to appropriately advise detailees of their ethics requirements.

As ethics officials at a detailee's receiving agency will have greater insight into a detailee's current work assignments and related ethics issues, the receiving agency should serve as the primary point of contact for ethics questions that arise during the detail. However, ethics officials at the receiving agency should coordinate as appropriate with officials at the detailee's home agency to ensure appropriate advice is provided. Additionally, a detailee's home agency must be consulted if a receiving agency believes that a detailee requires a waiver under the conflict of interest laws or wishes to issue corrective action under the Standards,¹¹ and should

⁹ However, the receiving agency should consult with the home agency if they think it is appropriate.

¹⁰ However, the home agency should consult with the receiving agency if they think it is appropriate.

¹¹ Pursuant to 5 C.F.R. § 2635.106, only a detailee's home agency may issue corrective action. *See* 5 C.F.R. § 2635.106(b) ("It is the responsibility of the *employing agency* to initiate appropriate corrective or disciplinary action...." (emphasis added)). As such, a receiving agency must consult with and rely upon a detailee's home agency should the receiving agency seek to issue corrective action to a detailee.

also be consulted if a detailee is proposing to engage in an outside activity that may continue beyond the end of the detail.

II. Financial Disclosure Requirements

The financial disclosure system established by the Ethics in Government Act (“EIGA”)¹² requires employees who occupy a public or confidential financial disclosure position¹³ for a specified period of time to file new entrant and annual financial disclosure reports.¹⁴

A. Public Financial Disclosure Filers

The EIGA requires public filers to file their financial disclosure reports “with the designated agency ethics official at the agency by which the reporting individual is employed.”¹⁵ In light of this requirement, all detailees who are public financial disclosure filers are expected to file their reports with their home agency. This remains true even if the detailee is required to file a public financial disclosure report solely due to their detailed position.

Ethics officials at a detailee’s home agency should routinely provide the receiving agency with access to relevant information in the detailee’s financial disclosure report.¹⁶ Likewise, ethics officials at the receiving agency should ensure they receive a copy of a detailee’s financial disclosure report. These efforts ensure that both agencies can do an appropriate analysis of the detailee’s potential conflicts of interest.

B. Confidential Financial Disclosure Filers

Consistent with the implementing regulations of 5 C.F.R. part 2634, detailees who are confidential filers at their home agency should continue to file their required financial disclosure reports with their home agency while on detail.¹⁷ As with public filers, the detailee’s agencies should coordinate to ensure that both agencies have access to relevant information in the report to enable an appropriate analysis of a detailee’s potential conflicts.

Example 4: Detailee is a confidential financial disclosure filer at their home agency. Detailee is detailed to a receiving agency in a confidential financial disclosure filing position. Consistent with the regulation, Detailee files their confidential financial disclosure report with their home agency. The home agency ethics official subsequently

¹² 5 U.S.C. § 13101 *et seq.*

¹³ *See* 5 C.F.R. §§ 2634.202, .904.

¹⁴ 5 U.S.C. § 13103(a), (h); 5 C.F.R. §§ 2634.201(a)-(b), .204, .903(a)-(b).

¹⁵ 5 U.S.C. § 13105(a).

¹⁶ Moreover, for employees on detail for more than 60 days during the reporting period, the implementing regulations require the home agency ethics officials to coordinate with the receiving agency ethics officials if the detailee’s report reveals a potential conflict of interest. 5 C.F.R. § 2634.605(b).

¹⁷ *See id.* § 2634.602(a) (“Detailees will file with their home agency.”); *id.* § 2634.909(a) (procedures for filing confidential reports); U.S. OFF. OF GOV’T ETHICS, CONFIDENTIAL FIN. DISCLOSURE GUIDE 13 (2019), [https://www.oge.gov/web/OGE/nsf/Resources/Confidential+Financial+Disclosure+Guide+\(2019\)](https://www.oge.gov/web/OGE/nsf/Resources/Confidential+Financial+Disclosure+Guide+(2019)) (“If the position at the individual’s home agency is subject to confidential financial disclosure, the individual must continue to file the report with the home agency.”).

provides the receiving agency with a copy of Detailee's financial disclosure report to enable the receiving agency to review the report for potential conflicts.

However, OGE believes that detailees who are not confidential filers at their home agency but who are required to file a confidential financial disclosure report solely by virtue of their detailed position should file their reports with the receiving agency.¹⁸ In these cases, the receiving agency is best positioned to identify and remedy any potential conflicts of interest, while the home agency has previously determined that the detailee's duties do not require the filing of a financial disclosure report with the home agency.¹⁹

III. Required Ethics Training

To further the mission of the executive branch ethics program to prevent conflicts of interest, each agency is required to carry out a government ethics education program, including initial ethics training and annual ethics training.²⁰

Detailees, although temporarily detailed to another agency, fundamentally remain employees of their home agency.²¹ As detailees are employees of the home agency, the home agency is responsible for ensuring that a detailee receives required ethics training.²² However, a home agency may meet this obligation by confirming that the detailee has received appropriate training at the receiving agency. Home and receiving agencies should coordinate to ensure that all detailees are receiving their required ethics trainings at one or both agencies.²³

As a best practice, OGE advises agencies that receive detailees to hold an initial ethics orientation with those detailees to explain any supplemental regulations that may apply to them for the duration of their detail, as well as any other general ethics issues that may arise during their detail. Such orientations will ensure that detailees are familiar with the ethical standards of the receiving agency and connect detailees with the receiving agency's ethics office.²⁴

¹⁸ See OGE DAEOgram DA-10-20-92, at 4 (Oct. 19, 1992) (permitting a detailee to file confidential financial disclosure reports with the receiving agency if they "become a confidential filer solely by reason of a position occupied at the receiving agency"); U.S. OFF. OF GOV'T ETHICS, *supra* note 17, at 13-14 ("If the individual is only subject to confidential financial disclosure based on the position at the detail agency, the individual would file instead with the detail agency."). Note that consistent with the requirements for confidential financial disclosure, such detailees should be serving in the covered position for more than 60 days in order to become a financial disclosure filer. See 5 C.F.R. §§ 2634.204, .903.

¹⁹ As discussed above, ethics officials at a detailee's receiving agency should coordinate as needed with the detailee's home agency on the appropriate resolution of potential conflicts.

²⁰ 5 C.F.R. §§ 2638.301, .304, .307, .308,

²¹ See *id.* § 2638.603 (defining "employee"). For purposes of the executive branch ethics program regulations, detailees do not typically become employees of the receiving agency.

²² See *id.* § 2638.301 ("Every agency must carry out a government ethics education program to teach employees how to identify government ethics issues...").

²³ Agencies with questions regarding their reporting obligations for purposes of the annual questionnaire due to the presence of detailees should contact their OGE Desk Officer.

²⁴ As discussed above, although the home and receiving agencies should coordinate as needed on the resolution of ethics issues for detailees, the ethics office at the receiving agency should serve as the primary point of contact for ethics issues and questions that may arise during a detail.

IV. Conclusion

As detailees occupy a unique space in the personnel structure of the executive branch, the application of the ethics laws, rules, and regulations to detailees can raise novel questions. This Legal Advisory explains (1) a receiving agency's supplemental regulations, rather than those of the home agency, apply to employees on detail in excess of 30 days, (2) the Standard's references to "agency" and "official duties" apply to both the home and receiving agencies; (3) with one exception, detailees usually file financial disclosure reports with their home agency; and (4) a detailee's home agency is responsible for ensuring the detailee receives appropriate training, but may do so through coordination with the receiving agency.

By way of best practices, this Advisory encourages agencies to (1) confer as appropriate on the application of the Standards to detailees, with the receiving agency serving as the primary point of contact; (2) share relevant information in detailees' financial disclosure reports for accurate conflicts review; and (3) coordinate to ensure detailees receive any required ethics training. Receiving agencies are further encouraged to provide incoming detailees with an initial ethics orientation.

To assist agencies in navigating issues relating to detailees, OGE has created a job aid to serve as a quick reference guide to the guidance and conclusions of this Legal Advisory. Agency ethics officials with questions about this Legal Advisory are encouraged to contact their OGE Desk Officer.

Attachment

Coordinating Ethics Responsibilities for Detailees

Below is a summary of issues that routinely arise during detail assignments that may require coordination between the home and receiving agencies. Agencies that regularly detail employees to another agency may find it useful to create standard guidance for their employees going on detail.²⁵ In addition, agencies that send or receive detailees should establish a method to share relevant information, including relevant points of contact and financial disclosure documents.²⁶

	Home agency	Receiving agency
While on detail, what is each agency's role in ethics advice and counseling?	Although the receiving agency is expected to serve as the primary point of contact for ethics advice during the detail, the home agency should make itself available to coordinate with the receiving agency, if needed.	The receiving agency serves as the primary point of contact for ethics advice that is needed during the detail. The receiving agency should coordinate with the home agency as necessary. Consult with the home agency on issues related to: <ul style="list-style-type: none"> - Waivers issued under 18 U.S.C. § 208(b)(1) - Corrective action under 5 C.F.R. § 2635.106 - Outside activities that may continue when the detailee returns to the home agency. <i>See</i> 5 C.F.R. § 2635, subpart H.
For purposes of applying the Standards of Conduct, which agency and which official duties are relevant?	Both the home and receiving agencies, and the detailee's official duties at both agencies, are relevant when applying the Standards of Conduct.	Both the home and receiving agencies, and the detailee's official duties at both agencies, are relevant when applying the Standards of Conduct.

²⁵ For detail assignments that require significant coordination between the home and receiving agencies, ethics officials may find it useful to coordinate in advance through a memorandum of understanding, interagency agreement, or other similar personnel paperwork related to the employee's detail.

²⁶ As an agency's human resources office is often best positioned to know when employees are cycling in or out of details, agency ethics officials are encouraged to work with their agency's human resources officials to establish practices and procedures for sending and receiving detailees. *See* 5 C.F.R. § 2638.105.

	Home agency	Receiving agency
If the detailee is a financial disclosure filer, where should they file their report?	<p><i>Public Filers:</i> All public financial disclosure filers are required to file with the home agency. Confer with the receiving agency regarding potential conflicts.</p> <p><i>Confidential Filers:</i> If the employee is a confidential filer at the home agency, they will continue to file with the home agency while on detail. Confer with the receiving agency regarding potential conflicts.</p>	<p><i>Public Filers:</i> Public filers do not file their reports with the receiving agency. However, as a best practice, the receiving agency should receive a copy of the detailee’s report to review for conflicts.</p> <p><i>Confidential Filers:</i> The filer will usually continue to file with the home agency. However, if the confidential filing obligation arises solely because of the detail assignment, the detailee will file with the receiving agency. Confer with the home agency regarding potential conflicts.</p>
If the detailee is required to receive ethics training, which agency should provide the training?	<p>The home agency maintains responsibility for a detailee’s ethics training requirements. The home agency may satisfy this obligation by ensuring the detailee has received appropriate training with the receiving agency while on detail.</p>	<p>The receiving agency should be available to coordinate with the home agency on any training the detailee receives while on detail.</p> <p>As a best practice, the receiving agency should provide detailees with an initial ethics briefing to familiarize detailees with any applicable supplemental rules or agency-specific ethics requirements. An initial briefing will also help to connect the detailee with the receiving agency’s ethics officials.</p>
If the home and/or receiving agency have supplemental ethics regulations, which regulations apply?	<p>The home agency’s supplemental regulations apply to a detailee on a detail of 30 days or less. The home agency’s supplemental regulations do not apply to a detailee on detail in excess of 30 days.</p>	<p>The receiving agency’s supplemental regulations apply to a detailee if the detail is in excess of 30 days. The receiving agency’s supplemental regulations do not apply to a detailee on a detail of 30 days or less.</p>