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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Ethics Guidance on Use of Professional Networking Platforms and Monetizing Social Media Activity

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to answer frequently raised questions concerning the application of the Federal ethics laws to new developments in the use of personal social media. Specifically, this Legal Advisory discusses: (1) employees' use of personal accounts on professional networking platforms, such as LinkedIn, and (2) the monetization of personal social media activities. This Advisory builds on guidance OGE previously provided on the ethical use of personal social media accounts in 2015.<sup>1</sup> Because the use of social media continues to evolve, this Legal Advisory specifically addresses trends in personal social media that have arisen in recent years.

**I. Personal Use of Professional Networking Platforms**

Professional networking platforms, such as LinkedIn, are a subset of social media platforms that are characterized by a focus on employment and other professional activities. Consistent with the purpose and culture of these professionally focused networks, users of these platforms often share professional accomplishments, job updates, and posts that are related to their work.<sup>2</sup>

Employees' personal use of professional networking platforms is generally permissible under the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct).<sup>3</sup> However, given the focus these platforms have on professional activities, employees must be particularly mindful of implying governmental sanction or endorsement of their

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<sup>1</sup> OGE Legal Advisory LA-15-03 (Apr. 9, 2015). OGE also provided guidance in 2020 about crowdfunding activities, many of which occur over either dedicated fundraising social media networks (e.g., GoFundMe) or general social media platforms (e.g., Facebook/Meta), *see* OGE Legal Advisory LA-20-07 (Oct. 6, 2020).

<sup>2</sup> Unless an employee is operating an official social media account (e.g., as discussed in question (e)), the employee is using the professional networking platform in an employee's personal, rather than official, capacity. OGE Legal Advisory LA-21-09, at 3, fn. 4 (Sept. 28, 2021).

<sup>3</sup> OGE Legal Advisory LA-15-03, at 1.



accounts.<sup>4</sup> As discussed below, if employees make reference to their official positions in their professional networking accounts, they are encouraged to use disclaimers to make it clear to the public that statements made on their professional networking accounts are personal and are not endorsed or sanctioned by the government.<sup>5</sup>

**(a) What type of disclaimer should I consider using on my professional networking account?**

OGE suggests using the following standard disclaimer language: “The views and opinions provided herein are my own and do not necessarily represent the views of the [agency] or of the United States.”<sup>6</sup> Where possible, use of this standard disclaimer language is preferable. Disclaimers should be included in areas of an employee’s profile that will be prominently displayed to other users. For example, on LinkedIn, a user should consider adding a disclaimer to their Headline and to the About section.

If constraints placed on professional networking user profiles (such as space and character restrictions) make it impossible or impracticable to include the standard disclaimer language, employees should feel free to use alternative language, so long as it clarifies that the positions provided are personal to the employee.<sup>7</sup> For example, a disclaimer saying “Views are my own,” “Not an official account; opinions are my own,” or a similar statement would generally be sufficient to resolve public confusion.

**(b) Can I identify myself as a government employee in the biographical areas of my profile on a professional networking platform?**

In general, yes. OGE has previously advised that simply noting an employee’s government affiliation, title, or position in the employee’s background section of their user profile would generally not violate the Standards of Conduct.<sup>8</sup> However, employees who choose to identify themselves by their government affiliation must be careful that content posted to their account does not appear to be government-sanctioned or endorsed, and disclaimers are often appropriate.

**(c) Can I use my official picture or a picture of me at a work event as my profile picture?**

In general, yes. Most government-created intellectual property, including official photographs, is in the public domain and copyright-free.<sup>9</sup> Employees may generally use such

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<sup>4</sup> This section discusses uncompensated use of professional networking platforms. Employees who have monetized their accounts must follow the guidance set forth in Part II.

<sup>5</sup> See OGE Legal Advisory LA-15-03, at 3; OGE Legal Advisory LA-14-08, at 3 (Nov. 1918, 2014); OGE Inf. Adv. Op. 10x1 (Mar. 1918, 2010).

<sup>6</sup> See 5 C.F.R. § 2635.807(b).

<sup>7</sup> See OGE Inf. Adv. Op. 10x1.

<sup>8</sup> OGE Legal Advisory LA-15-03, at 2.

<sup>9</sup> 17 U.S.C. § 105(a).

photos on the same terms as other members of the public.<sup>10</sup> Personal pictures taken at work events generally may also be used—however, such pictures must not disclose nonpublic information.<sup>11</sup> Employees using such pictures must follow all relevant laws, regulations, and their agency policies related to the taking of photographs, use of uniforms, and use of government vehicles and property.<sup>12</sup>

Employees should also be mindful that use of an official photo or picture at a work event will increase the possibility that a member of the public may interpret the employee’s posts as official rather than personal.<sup>13</sup> For example, if an employee’s LinkedIn profile picture includes the agency’s flag and a Senior Executive Service flag, and every post relates to agency activity, a reasonable user could conclude that the employee’s agency or the government sanctions or endorses that employee’s personal activities on LinkedIn.<sup>14</sup> If an employee is planning to use such a photo as their user profile picture, particularly if they are a high-level official, use of a disclaimer is greatly encouraged.<sup>15</sup>

**(d) Can I post public information that my agency publishes, such as a job vacancy, or repost my agency’s social media posts?**

In general, yes. OGE understands that employees may want to highlight agency projects or achievements on their LinkedIn profiles or through other professional networking platforms. Posting such information is not inherently counter to the ethics rules. An employee of the Department of Agriculture (USDA) may, for example, occasionally post an agency vacancy announcement or link to a post from the USDA’s official LinkedIn page.

Employees should be mindful, however, that exclusively or predominantly posting agency activity may create the appearance that the employee’s professional networking account—and any statements the employee makes on that account—are sanctioned by the government or represent official agency statements or views.<sup>16</sup> All employees who are planning to post content related to their agency are encouraged to include a disclaimer on their profile and posts. .

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<sup>10</sup> 5 C.F.R. § 2635.704(b)(2).

<sup>11</sup> *Id.* § 2635.703. In addition, employees who are taking photographs on government property or at work events should consider the privacy interests of other attendees.

<sup>12</sup> *See, e.g., id.* §§ 2635.101(b)(14), 2635.704(a). In addition, separate statutory or regulatory restrictions govern the use of government uniforms, flags, and seals. *See, e.g.,* 18 U.S.C. §§ 506, 1017, ch. 33 (placing statutory prohibitions on certain misuse of department and agency seals). In addition, military service members must abide by DoD Instruction 1334.01, *Wearing of the Uniform* (July 13, 2021) (placing limitations on use of military uniforms), DoD Instruction 5400.17, *Official Use of Social Media for Public Affairs* (change 1) (Jan. 24, 2023) (advising on the use of military uniforms in personal social media), as well as the guidance on appropriate wear of uniforms promulgated by each branch of service.

<sup>13</sup> *See* OGE Legal Advisory LA-15-03; OGE Inf. Adv. Op. 97x3 (Mar. 2120, 1997).

<sup>14</sup> *See* OGE Legal Advisory LA-15-03, at 2-3.

<sup>15</sup> *See id.*, at 3; OGE Legal Advisory LA-14-08, at 3 (Nov. 1918, 2014).

<sup>16</sup> *See* 5 C.F.R. §§ 2635.701, .702; OGE Legal Advisory LA-11-06 (Sept. 7, 2011).

**(e) I hold a leadership position at my agency and have been assigned an official social media account. May I post content on my personal professional networking account that was first posted on my official social media account?**

In general, yes. An employee who has an official social media account, such as an agency head, is not *per se* prohibited from re-sharing, re-posting, or linking to official content on their personal professional networking account under the Standards of Conduct.<sup>17</sup> OGE has previously noted, however, that the risk that an employee’s personal social media activities will be misconstrued as official activity increases when an employee “is authorized to speak for the [g]overnment as part of the employee’s official duties” or “refers to their connection to the government as support for the employee’s statements.”<sup>18</sup> To avoid confusion, employees who have both official and personal social media accounts are encouraged to include a disclaimer in their personal user profile and posts.

**(f) I recently attended a conference in my official capacity. May I post about it on my professional networking account?**

In general, yes. Employees are not prohibited from sharing content related to professional events, such as conferences, merely because they are attending in their official capacity.<sup>19</sup> At the same time, employees must be mindful that the inclusion of information related to official events they are attending or where they are speaking in an official capacity is likely to increase confusion about whether the content is being provided officially or personally. As a result, employees who choose to share such information are encouraged to include a disclaimer in their user profile and posts. There are, however, instances where a disclaimer would not be sufficient to resolve potential endorsement concerns. Please see question (g) for further discussion.

**(g) Are there times when a disclaimer in my user account would not be sufficient to resolve potential endorsement concerns?**

Sometimes, yes. Use of a disclaimer is not sufficient when the employee has, or appears to have, intentionally misused their title, position, or authority to endorse their personal networking activities. For example, if U.S. Customs and Border Protection (CBP) employee highlights their current work at CBP in a LinkedIn post advertising immigration advisory services they provide in their personal capacity, use of a disclaimer would not be sufficient to make this activity compliant with the Standards of Conduct.

## **II. Monetizing Personal Social Media Activities**

Over the past decade, social media networks have increasingly offered ways for users to generate income using their social media accounts and content. Social media users are able to monetize their accounts by, for example, (1) selling products and services; (2) advertising third-party products and services (i.e., “branded content”); and (3) receiving payments directly from a social media network, such as subscription fees, ad revenue, or payments from a platform’s

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<sup>17</sup> Employees should be mindful, however, that it would be a misuse of office to create official content for the purpose of reposting to their professional networking account or other social media. *See* 5 C.F.R. § 2635.702.

<sup>18</sup> OGE Legal Advisory LA-15-03, at 3.

<sup>19</sup> *See id.*

“creator funds.”<sup>20</sup> Employee engagement in income-producing social media activities will not always implicate the Standards of Conduct; however, the Standards of Conduct may prohibit or limit certain activities. As a result, OGE is providing answers to certain frequently asked questions about how employees may monetize their personal social media accounts consistent with the ethics rules.

**(a) Should I consult with my agency ethics office before monetizing my personal social media account?**

Yes. While there is no executive branch-wide requirement for prior approval of outside employment and activities, many agencies have implemented supplemental ethics regulations that require employees to notify the agency ethics office about proposed outside activities and receive prior approval. Some agencies require prior approval for outside employment and activities, while some agencies require it only for certain forms of outside activities or for activities with certain outside organizations.

In addition, employees may not engage in monetized personal social media activity that would conflict with their official duties.<sup>21</sup> It is therefore a good idea for employees to check with their ethics office before taking steps to monetize their personal social media account. This will ensure not only that the employee can comply with necessary prior approval requirements, but also that the employee is aware of the potential ethical pitfalls that may arise and how to avoid them.<sup>22</sup>

**(b) If I am promoting branded content, do I have any recusal obligations related to that company?**

Yes. If an employee has entered into an agreement to promote a company’s products as an influencer or brand ambassador, the employee has a “covered relationship” with that company.<sup>23</sup> As a result, for the duration of the arrangement, the employee would be required to recuse from any particular matter involving specific parties in which the company is a party or represents a party if a reasonable person would question the employee’s impartiality.<sup>24</sup> Employees should keep in mind that the covered relationship begins at the point that they begin seeking a financial arrangement with the company.<sup>25</sup> For example, an employee of the Department of Agriculture would have a covered relationship with an energy drink company once they have contacted the company seeking to enter into a sponsorship agreement. Employees

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<sup>20</sup> See Marta Biino, *How to Make Money as a Content Creator, According to Dozens of Influencers*, INSIDER (May 4, 2023), <https://www.businessinsider.com/top-ways-to-make-money-as-content-creator#:~:text=Partnering%20with%20brands%20for%20sponsored,to%20advertise%20products%20or%20services>.

<sup>21</sup> 5 C.F.R. § 2635.802.

<sup>22</sup> Employees who monetize their social media accounts may also receive offers of discounted goods or services from brands with which they work. These employees should consult with their ethics officials to ensure that any offered gifts from an outside source are analyzed under subpart B of the Standards of Conduct.

<sup>23</sup> 5 C.F.R. § 2635.502(b)(i). Employees should be aware that some companies allow influencers to start promoting their products through fairly simple click-through contracts. Although these arrangements may feel fairly informal, they establish a covered relationship nonetheless.

<sup>24</sup> *Id.* § 2635.502(a).

<sup>25</sup> *Id.*

who reach out to a company seeking to enter into such an agreement, or are negotiating an agreement, must therefore abide by the recusal obligations set forth in 5 C.F.R. § 2635.502.

Moreover, employees are prohibited from taking any actions that could affect their own personal financial interests or those of a person whose interests are imputed to them under 18 U.S.C. § 208(a). As a result, if any such person has entered into a brand promotion contract, an employee may not participate in any particular matter that would affect the company's ability or willingness to abide by the brand promotion contract or could affect the commission the employee receives for promoting the company's products.<sup>26</sup> For example, if an employee of the Federal Trade Commission (FTC) has a branding agreement with a company, that employee could not be part of the FTC legal team bringing a suit against that company which argues that the company's contracts—including the one the employee had signed—include terms that are unfair methods of competition.

**(c) If I have an arrangement with a social media platform to permit the platform to show advertisements during my video content, do I have a covered relationship with the platform or the advertisers?**

It depends on whether the arrangement is with the platform or the advertisers. If an employee has an agreement with a social media platform to monetize their account through the platform, the employee has a "covered relationship" with the platform and should consider recusal.<sup>27</sup> For example, if an employee enters into the YouTube Partner Program, which allows participants to earn revenue from advertisements after amassing a certain number of subscribers, that employee would then have a covered relationship with YouTube and its parent companies.<sup>28</sup>

However, an employee generally does not have a covered relationship with an advertiser merely because a social media platform has included an advertisement before, during, or after the employee's content. The platform generally decides which advertisements are shown, and the employee generally will not have a direct relationship with the advertiser. However, if an employee did enter into a direct agreement with an advertiser, they would have a covered relationship with that advertiser.<sup>29</sup>

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<sup>26</sup> In certain unusual cases, an employee's agreement would also create an employment arrangement with the outside company. In those cases, the employee must recuse from any particular matter affecting the financial interests of the company, and not just any matter that affects their own personal financial interests. 18 U.S.C. § 208(a). In addition to the criminal law, the Standards of Conduct further require employees to avoid any instance of using their public office for private gain. *See* 5 C.F.R. §§ 2635.101(b), 2635.702. This is another reason OGE recommends that employees consult with ethics officials early in the process.

<sup>27</sup> 5 C.F.R. § 2635.502(b)(1)(i). In addition, it is possible that some social media platforms may enter into employment relationships with influencers. Though this would be a rare case, an employment relationship would impute the financial interests of the platform to the employee under 18 U.S.C. § 208(a).

<sup>28</sup> *Id.*

<sup>29</sup> Employees should also be mindful that they are precluded from participating in any particular matter that would affect advertising revenue derived from their social media content. 18 U.S.C. § 208(a),

**(d) Can I mention my government position in the background section of my social media profile if I engage in income-generating activity on that social media account?**

It depends. In general, employees who use their personal accounts for income-generating activities should only reference their government affiliation if it would be clear to a reasonable person that the employee's government affiliation is unrelated to their outside activities.<sup>30</sup> For example, it would be permissible for an employee of the Transportation Security Administration to include their official title in the background section of their Facebook account when the employee uses the account for a variety of non-commercial reasons and also engages in a limited amount of commercial activity, such as selling items through Facebook Marketplace or linking to their Etsy jewelry shop. On the other hand, an aerospace engineer of the National Aeronautics and Space Administration (NASA) should not include their official government title as part of the biographical section on a personal subscription-based Instagram account through which the NASA employee sells online courses on aerospace engineering.

**(e) May I reference my official title, wear a government uniform, or use photos or video containing government equipment or spaces as part of monetized content?**

No. The Standards of Conduct prohibit employees from using their government position for their own private gain, or for the endorsement of a product,<sup>31</sup> and the use of government titles or uniforms in monetized content would normally imply governmental sanction or endorsement.<sup>32</sup> For example, a Marine Corps officer would be precluded from posting paid social media content promoting a weight-lifting supplement while identifying as a member of the Marines.<sup>33</sup>

**(f) Can I create paid content during the government workday?**

No. The Standards of Conduct provide that employees must use their official time in an honest effort to perform official duties.<sup>34</sup> Although some agencies have limited use policies that permit employees to engage in non-commercial activity during the workday, these policies generally do not permit an employee to engage in any commercial activity during the workday. Thus, if an employee is spending time on duty filming monetized content, they would be in violation of the Standards of Conduct.

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<sup>30</sup> 5 C.F.R. § 2635.702(b), (c).

<sup>31</sup> *Id.* § 2635.702. As discussed in OGE Legal Advisory LA-15-03, the agency ethics official must consider the totality of the circumstances to determine whether a reasonable person with knowledge of the relevant facts would conclude that the government sanctions or endorses the communication. OGE Legal Advisory LA-15-03, at 2 (Apr. 9, 2015).

<sup>32</sup> The Standards of Conduct also prohibit the use of official government property, including official government uniforms, for any purposes outside of those that are authorized. *See* 5 C.F.R. § 2635.704(a).

<sup>33</sup> *Id.* § 2635.702(c); DOD Instruction 5400.17, *Official Use of Social Media for Public Affairs Purposes*, § 8 (change 1) (Jan. 24, 2023).

<sup>34</sup> 5 C.F.R. § 2635.705(a.)

Employees who are working under telework and remote work arrangements should keep in mind that they are expected to use official time for official duties, regardless of whether they are working in a government facility or at an alternative duty station (such as their home).<sup>35</sup>

**(g) Can I create paid content on government property that is open to the public?**

It depends. The Standards of Conduct prohibit employees from using government property for other than an authorized purpose.<sup>36</sup> Permissible uses of government property include “purposes for which government property is made available to members of the public or those purposes authorized in accordance with law or regulation.”<sup>37</sup> As a result, an employee may create monetized content on government property if (1) the area is open to the public, (2) the public is authorized to engage in commercial activity on the property, (3) the employee has received all required permits and adheres to applicable filming and photographic restrictions, and (4) the content is created during the employee’s personal time. For example, an employee may create content for their monetized social media account in areas of a national park where commercial filming and photography are allowed, if they have first received a commercial use permit from the National Park Service and adhere to all applicable laws and regulations.<sup>38</sup> Employees may not create monetized content on government property not generally made available to the public for commercial activity unless specifically authorized by law or regulation.

**(h) Can I ask a subordinate to assist me with branded content or content that would be used on my personal social media account?**

No. A supervisor may not order, coerce, or induce a subordinate to assist in personal activities, including creating, editing, filming, or otherwise preparing monetized content for the supervisor’s social media accounts.<sup>39</sup> Moreover, a supervisor cannot encourage, request, direct, or coerce a subordinate to use official time to perform personal activities that are not part of the subordinate’s official duties.<sup>40</sup> Employees are also discouraged from inviting colleagues, particularly subordinates, to “follow” their social media account if it is used to engage in income-generating activity.<sup>41</sup>

**(i) Am I permitted to include nonpublic government information—including pictures, videos, or audio—on my monetized social media account?**

No. An employee may not share nonpublic information to further any private interest – for example, when that employee is aware that they may stand to receive advertising revenue (or other payments) as a result of visitors engaging with the content.<sup>42</sup> Employees must be mindful that nonpublic information can appear in pictures, videos, and audio, as well as in text

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* § 2635.704.

<sup>37</sup> *Id.*

<sup>38</sup> *See* 54 U.S.C. § 100905; 43 C.F.R. pt. 5; 36 C.F.R. pt. 5.5.

<sup>39</sup> 5 C.F.R. § 2635.702; OGE Legal Advisory LA-15-03 (Apr. 9, 2015).

<sup>40</sup> 5 C.F.R. § 2635.705.

<sup>41</sup> *See id.* § 2635.702(a).

<sup>42</sup> *Id.* § 2635.703.



documents. For example, an employee with a monetized Instagram account may not reference conversations they had about bidders for a government contract as part of a summary of their day on an Instagram Live story. The same employee also could not share a video of their office showing documents that contain nonpublic information.

Agency ethics officials may contact their OGE Desk Officers if they have any questions about the application of the ethics rules to employees' use of personal social media.