Dr. Singh-Smith,

Thank you for reaching out to the Ethics Office for guidance and thank you for meeting with me last week to discuss these matters further.

You asked for ethics clearance to (1) participate in interviews of prospective non-government partners related to document management, including NextGen, a company your wife provides consultative services for and owns stock in; and (2) meet with the AMH grants team to provide them further information about your prior employer, NAMI, who has applied for an AMH grant.

**Bottom Line:** To ensure compliance with your ethical obligations as a federal employee and maintain both actual and apparent impartiality in public office, the Ethics Office advises against (1) your participation in the document management partnership meetings; and (2) setting up a meeting with the grants team about NAMI.

In our discussion last week, I offered similar initial guidance, which you appeared to accept. Indeed, you mentioned that you thought you could find someone on your team to sit in on the document management partnership meetings, and that you understood the appearance concerns related to you meeting with the grants team on behalf of NAMI.

Below I offer you a more detailed summary of the facts, law, and my ethics analysis. Please review in full and let me know if you have questions.

**Facts:**

Document Management Strategic Partnership: As I understand it, AMH is looking for a strategic partner to help with some of its medical information security and accessibility needs. At a recent deputies’ meeting, Naomi Guzman, Chief of Medical Information Security (MIS), asked you to attend upcoming information gathering meetings with NextGen Health (NextGen) and Cerner Corp to make sure that AMH is asking the right questions. AMH has not started the procurement process yet and you expect there will be other information gathering meetings with other prospective partners that you will be asked to attend.

You explained that you and your component, Programs Funding, would be the user of the technology ultimately procured and so you have a vested interest in who AMH partners with and the success of any procurement. Your role in the meetings would be to make sure that the product meets your needs in terms of use, availability, and efficiency. You expect you would ask questions at these meetings and ultimately offer input, advice, and your recommendations to Dr. Guzman for a procurement decision. Ideally, you would like to be a full partner with MIS throughout the selection process. The contract terms will include a $2.5 million contract for the first year, with similar maintenance level contracts thereafter.

Your wife provides consultative services to NextGen through her company, which she owns in sole proprietorship. Specifically, your wife is an IT developer and provides consultation to NextGen regarding database systems both internally and externally for NextGen’s clients. Last month, she and NextGen entered an agreement where they put her on a retainer where she will be paid $1,000 a month for eight hours of consultation. Additionally, from your annual 278e, your wife has NextGen stock, with a value around $11,000-12,000.

Grants Team Meeting regarding NAMI: The grants team is a part of the Programs Funding component that you help lead as the Deputy Director. While you are involved in deciding how much money goes into a grant, you are typically uninvolved in grant review or the award decision. The grants team is currently reviewing applications for a large youth grant.

You previously were the Director of Giving at the National Alliance on Mental Illness (NAMI), a position that ended around the time you started at AMH in late March/early April of 2022. You still keep in touch with past colleagues and are a NAMI donor. At a recent conference, you caught up with a past NAMI colleague, Jen Snow who is the National Director of Government Relations and Policy. She mentioned that since submitting its application for the AMH youth grant, NAMI has been able to increase staffing significantly for its youth programming. Ms. Snow made some efforts to pass forward this information to the grants team, but her efforts were rebuffed, with the grants team stating they don’t consider additional information after the grant application period closes and the review period begins.

You are concerned that the grants team does not have full visibility into NAMI in relation to the pending youth mental health grant. You’d like to set a meeting with the grants team to help fill in the gaps about NAMI and, in particular, share information related to NAMI’s increased youth services.

Governing Agreement: At the time that you entered federal service, you signed an ethics agreement regarding potential conflicts. As relevant here, you agreed to the following terms:

* As long as you or your wife owned certain interests, including NextGen stock, you would not participate personally and substantially in any particular matter that to your knowledge would have a direct and predictable effect on the financial interests of NextGen, unless you received a waiver or qualified for a regulatory exemption.
* You will not participate personally and substantially in any particular matter that (1) to your knowledge has a direct and predictable effect on your spouse’s compensation or contract without written waiver; or (2) involves specific parties that you know include a client of your spouse, unless authorized to participate.
* For one year after your resignation from NAMI, you would not participate personally and substantially in any particular matter involving specific parties in which you knew NAMI was a party, unless authorized to participate.

Recent OGE-201 Requests: We are in receipt of several OGE-201 requests to inspect or receive copies of your annual 278e form and related agreements and/or waivers, including requests from Cern, The New York Journal, and the Trevor Project.

**Laws/Regulations and Governing Agreement:**

To ensure that every citizen can have complete confidence in the integrity of the federal government,federal employees are subject to restrictions related to financial conflicts of interest, other conflicts of interest, and the misuse of position.

Financial Conflicts of Interest: Under criminal statute 18 U.S.C. § 208, an employee may not participate personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other covered person has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The Office of Government Ethics (OGE) has promulgated regulations expanding upon federal employee’s obligations under this statute. *See* 5 C.F.R. § 2635.401, *et seq*.; § 2640.101, *et seq*. As relevant here:

* A “covered person” includes an employee’s spouse, 18 U.S.C. § 208; 5 C.F.R. § 2640.103(c).
* A “particular matter involving specific parties” can include both application determinations and contract grants, and any related deliberation, decision, or action. 5 C.F.R. §§ 2640.102(l), 2640.103(a)(1), Examples 1 and 2.
* An employee’s involvement may be “personal and substantial” when the employee participates “through decision, approval, disapproval, recommendation, investigation, or the rendering of advice on a particular matter.” *Id*. at § 2640.103(a)(2).
* Disqualifying financial interests include ownership of stock or an interest related to a salary, job offer, or similar interests. *Id*. at § 2640.103(b).
* A direct effect involves a close causal link between any decision or action taken in the matter and any expected effects of the matter on a financial interest” while a predictable effect is a real, as opposed to speculative, possibility that the matter will affect the financial interest. *Id*. at § 2640.103(a)(3)(i)-(ii).

There are some exceptions that permit an employee’s continued participation in a matter despite a financial conflict. *See* 5 C.F.R. § 2640.201, *et seq*. As relevant here, an employee may continue participation in such a matter if the disqualifying financial interest is a publicly traded security with an aggregate market value of less than $15,000.00. *Id*. at § 2640.202(a). An employee may also continue to participate in such a matter if waiver is granted by the agency designee or may cure the issue with divestiture of the relevant financial interest. *Id*. at §§ 2635.402(d)-(e), 2640.103(e), 2640.301, *et seq*.

Other Conflicts of Interest and Impartiality: Conflicts can still arise even if action on agency matter will not affect the financial interest of the employee or a covered person as defined under the criminal statute. In particular, under 5 C.F.R. § 2635.501, a federal 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/imputed 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. As relevant here, a federal employee has an imputed relationship with a member of his household or a non-government party for whom the employee has, within the last year, served as an employee. *Id*. at § 2635.502(b)(1)(iv). An employee should typically recuse himself from such matters unless he has been authorized to continue to participate in a matter by the agency designee. *Id*. at §§ 2635.502(d), (e).

Misuse of Position: More generally, under the [Standards of Ethical Conduct for Employees of the Executive Branch](https://www.oge.gov/web/OGE.nsf/0/A8ECD9020E3E384C8525873C0046575D/%24FILE/SOC%20as%20of%2085%20FR%2036715%20FINAL.pdf) (Standards), federal employees must not use their public office for private gain, give preferential treatment to any private organization or individual, or act with partiality/favoritism. 5 C.F.R. §§ 2635.101(b)(1), (7), (8). Moreover, federal employees shall endeavor to avoid any actions creating the “appearance” of an ethical violation. *Id*. at §§ 2635.101(b)(14), 2635.501. As relevant here, an employee shall not use his public office for the private gain of himself or that of parties he is affiliated with in a nongovernmental capacity. 5 C.F.R. § 2635.702. This includes a prohibition on an employee using their government position or authority in a manner to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to others he is affiliated with in a nongovernmental capacity. *Id*. at 2635.702(a). Rather, to ensure that the performance of his official duties does not give rise to the appearance of misuse of public office for the benefit of another he is associated with outside of work, an employee should recuse himself from any such matters as they arise. *Id*. at 2635.702(d).

**Analysis:**

For the reasons discussed below, I would advise you against (1) participation in the document management partnership meetings; and (2) setting up a meeting with the grants team about NAMI.

Document Management Strategic Partnership: First, regarding the document management strategic partnership, you should not participate in the meetings or ultimate procurement decision. Instead, I recommend you recuse yourself from any involvement in this partnership or procurement decision.

By participating in these meetings, you would risk breaching the terms of your ethical agreement (if waiver/authorization is not received) and violating criminal statute 18 U.S.C. § 208, along with other ethical obligations.

Specifically, from the facts you have provided me, it appears that if you were involved in these meetings and the ultimate procurement decision, you would likely meet most, if not all, of the requirements of the § 208 and its corresponding regulations:

* Covered Person: Your wife is a “covered person” under Section 208. *See* 18 U.S.C. § 208; 5 C.F.R. § 2640.103(c).
* Particular Matter: While not yet in the procurement stage, because the meetings with prospective partners are expected to ultimately lead to a contract grant, these meetings involve a “particular matter involving specific parties.” 5 C.F.R. §§ 2640.102(l), 2640.103(a)(1), Examples 1 and 2; *see also* [OGE Legal Advisory (LA) 06 x 8](https://www.oge.gov/Web/oge.nsf/Legal%20Docs/1A19064302E29310852585BA005BED0A/%24FILE/06x8_.pdf?open) (“OGE has concluded that a matter may be covered prior to the receipt of any formal application or request from a private entity, as long as there have been agency discussions about the matter”).
* Personal and Substantial Participation: Your role of asking questions and providing your input, advice, and recommendation constitutes personal and substantial participation. *Id*. at § 2640.103(a)(2). Indeed, as you stated you would like Programs Funding to be a full partner with MIS throughout the selection process.
* Disqualifying Financial Interest: Your wife’s NextGen stock meets the definition of a disqualifying financial interest. *Id*. at § 2640.103(b). The stock, however, is below the *de minimus* threshold of $15,000.00, and so that interest could be exempt. Even so, your wife also has an ongoing retainer agreement for consultative services with NextGen. While the regulations do not explicitly include consideration of a retainer agreement as a disqualifying financial interest, the definition includes an interest derived “from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter,” which is sufficiently broad to include a retainer agreement. *Id*. In a related matter, OGE issued a legal opinion about whether an employee could continue to participate in a project involving a private contractor with whom the employee’s wife had a part-time retainer, noting additional appearance concerns. *See* [OGE LA 84x6](https://www.oge.gov/Web/oge.nsf/Legal%20Docs/7167E939AE3B3255852585BA005BEF64/%24FILE/b590f7160965476f9ac4889ae9853a032.pdf?open). OGE reasonably found that “it is not the nature of the financial arrangement between [the employee’s wife] and [the company] that is crucial; rather, it is the husband-wife relationship which gives rise to the adverse appearance – that is, to the suggestion that [the employee] might lose his objectivity in performing his duties with regard to [the project] by reason of his wife’s services on behalf of [a company with a Government contract to perform services].”
* Direct and Predictable Effect: It is less obvious whether your involvement in these meetings will have a direct and predictable effect on your wife’s interests in NextGen. First, because partnership talks are in the early stages, it is unclear whether NextGen will make a bid for the partnership and whether AMH will grant it. It is also unknown whether a NextGen contract would result in an increase in consultative work for your wife.

Even if participating in the partnership meetings would not have a direct and predictable effect on your wife’s financial interests, my advice that you should recuse yourself remains the same. Beyond the risk of criminal violation, you risk an actual or apparent loss of impartiality, as well as the appearance of misusing your public office for private gain. *See* 5 C.F.R. §§ 2635.101(b)(1), (7), (8), 2635.501, 2635.702; *see also* OGE LA 84x6. And indeed, it appears that AMH and you, in particular, are already under scrutiny, with OGE-201 requests from a NextGen competitor, Cern, and the media, The New York Journal.

Given the facts overall, I do not recommend pursuing waiver under 5 C.F.R. § 2640.301 or agency authorization under 5 C.F.R. § 2635.502(d).

Grants Team Meeting regarding NAMI: Relatedly, I caution you against moving forward with a meeting with the grants team regarding NAMI and its application for the pending youth grant. Because over a year has past since you were employed at NAMI, the provision under the Ethics Agreement about NAMI would not apply nor would NAMI be a covered person under 5 C.F.R. § 2635.501. Even so, there would still be an appearance concern here. In particular, you risk an actual or apparent misuse of position if you were to move forward with meeting with the grants team.

As you stated, while the grants team is under your authority as the Deputy Director of Programs Funding, you are not involved in grant review or grant decisions. As a past employee and current donor of NAMI, you are affiliated with NAMI in a nongovernmental capacity. 5 C.F.R. § 2635.702. While your desire to meet with the grants team about NAMI is well-intentioned, by doing so, you risk appearing as though you are using your public office for NAMI’s private gain, particularly since grant review and awards are not part of your official or even typical duties. *Id*. at 2635.702(a). Members of the grants team could feel you are engaging in favoritism or, worse yet, the team could feel coerced into awarding NAMI the youth grant if you, their component’s Deputy Director, meet with them about NAMI in relation to its grant application. *Id*. Moreover, the Trevor Project, a non-profit competing for the youth grant, and the New York Journal have submitted an OGE-201 request of your 278e and related agreements. Thus, if you were involved in the youth grant review and decision, you risk exposing yourself and the agency to public and media scrutiny.

For these reasons, I do not recommend moving forward with a grants team meeting regarding NAMI. Furthermore, under the circumstances, I do not believe agency authorization under 5 C.F.R. § 2635.502(d) is feasible and do not recommend you pursue it.

**Conclusion:** For the reasons laid out above, I advise you to not participate in document management partnership meetings nor meet with the grants team about NAMI.

**Other Considerations/Recommendation:** Given your wife’s financial interests and ties to NextGen, I recommend that you work further with the ethics team to put in place a specific recusal agreement related to the procurement of a document management partner and any other necessary action to ensure you are walled off from that decision.