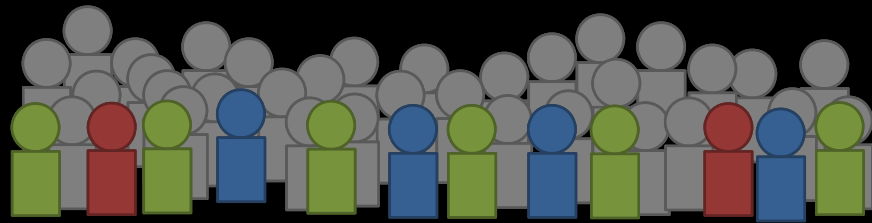


Ethics Authorities Specific to Noncareer Employees

U.S. Office of Government Ethics
August 31, 2017



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Overview

- What we mean by “noncareer employee”
- Which ethics authorities apply specifically – or differently – to noncareer employees than to career employees
- ★ Why it is so important to first answer the question, “who is asking for advice?”



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Part I:

What do we mean when we say “noncareer employee”?



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Part I:

- Appointees
- Covered noncareer employees
- Presidential appointees to full-time, noncareer positions



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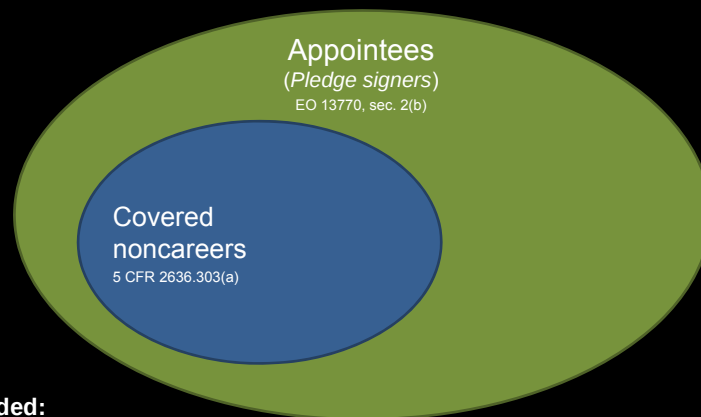
Appointee (for purposes of Ethics Pledge)

E.O. 13770, sec. 2(b)

Includes	Does NOT Include
• Presidential appointee (full-time, noncareer) • Vice-Presidential appointee (full-time, noncareer) • Senior Executive Service (SES) non-career appointee • Non-career appointee in another SES-type system • Schedule C • Other positions that are excepted from competitive service because they are of a confidential or policymaking character	• Career senior foreign service • Uniformed service commissioned officer Also NOT included: • SGEs • Schedule C with no policymaking role • Career SES

Sources: E.O. 13770, sec. 2(b); DO-09-003, DO-09-005, DO-09-010, DO-09-020, LA-17-02, LA-17-03 5

Relationship among the three groups



Excluded:
 SGEs
 Career employees
 Career SES
 Career Senior Foreign Service
 Uniformed Service Commissioned Officer

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Covered noncareer employee

5 C.F.R. § 2636.303(a), 5 U.S.C. app. §§ 501(a) and 502(a)

Must be able to check **both** boxes



Position classified above GS-15 or, if not under the General Schedule, position's rate of basic pay $\geq$ 120% of minimum rate of basic pay payable for GS-15. SGEs are excluded.



- ☐ Appointed by President to a position described in the Executive Schedule (5 U.S.C. §§ 5312-5317) or to a position that by statute or as a matter of practice, is filled by Presidential appointment*; or
- ☐ Noncareer member of the Senior Executive Service or of another SES-type system; or
- ☐ Schedule C or similar position under an agency-specific statute; or
- ☐ Noncareer executive assignment position or to a similar position under an agency-specific statute.

* Excludes positions within the uniformed services and positions within the foreign service below level of Assistant Secretary or Chief of Mission.

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Terminology

Rates of basic pay

Rate of basic pay:

Lowest step of an employee's pay grade. Adjustments, such as locality pay, are disregarded. Example: the rate of basic pay for a GS-15, Step 9, is the rate in effect for GS-15, Step 1. *Note: "Rate of basic pay" has a different meaning in the context of 18 U.S.C. § 207(c).*

Minimum rate of basic pay payable for GS-15:

Base pay, excluding locality pay, for GS-15, step 1. As of Jan. 8, 2017, this minimum rate is \$103,672. *Note: the SES pay range has a minimum rate of basic pay equal to 120% of the rate for GS-15, step 1.* Currently, this SES minimum rate of basic pay is \$124,406.

Sources: 5 C.F.R. § 2636.303(a), 56 FR 1723, OGE 98x2, 5 U.S.C. §§ 5376 and 5382, LA-17-01, <https://www.opm.gov/policy-data-oversight/senior-executive-service/compensation/>

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Schedule C, GS-15, Step 8

Covered noncareer?

???

Must be able to check **both** boxes

☐

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- ☐ Schedule C or similar position under an agency-specific statute; or
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* Excludes positions within the uniformed services and positions within the foreign service below level of Assistant Secretary or Chief of Mission.

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Career SES

Covered noncareer?

???

Must be able to check **both** boxes

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Noncareer SES

Covered noncareer?

???

Must be able to check **both** boxes

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Position classified above GS-15 or, if not under the General Schedule, position's rate of basic pay $\geq$ 120% of minimum rate of basic pay payable for GS-15. SGEs are excluded.

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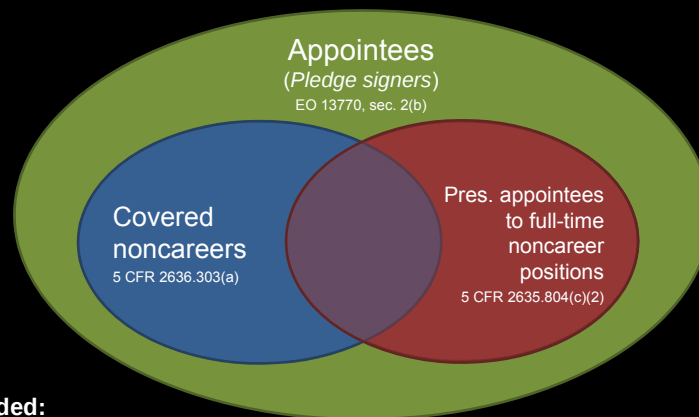
- ☐ Appointed by President to a position described in the Executive Schedule (5 U.S.C. §§ 5312-5317) or to a position that by statute or as a matter of practice, is filled by Presidential appointment*; or
- ☐ Noncareer member of the Senior Executive Service or of another SES-type system; or
- ☐ Schedule C or similar position under an agency-specific statute; or
- ☐ Noncareer executive assignment position or to a similar position under an agency-specific statute.

* Excludes positions within the uniformed services and positions within the foreign service below level of Assistant Secretary or Chief of Mission.



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Relationship among the three groups



Excluded:

SGEs
Career employees
Career SES
Career Senior Foreign Service
Uniformed Service Commissioned Officer

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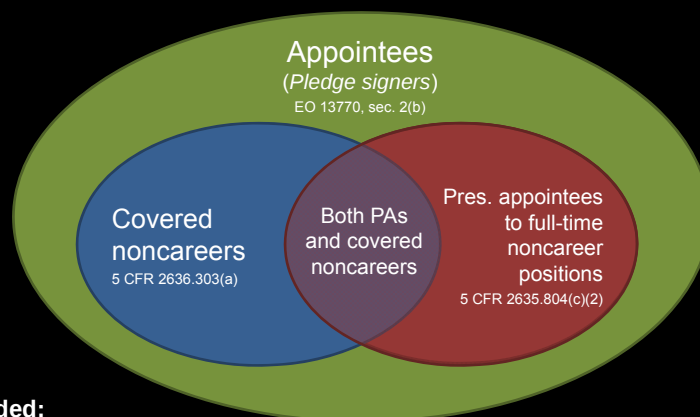
Pres. appointee to a full-time noncareer position

5 C.F.R. § 2635.804(c)(2)

Includes	Does NOT Include
- Appointed by President to a full-time position described in 5 U.S.C. §§ 5312-5317 (Levels I through V of Executive Schedule) - Appointed by President to a position that, by statute or as a matter of practice, is filled by Presidential appointment	- Positions filled under 3 U.S.C. § 105 or 3 U.S.C. § 107(a) for which the rate of basic pay is less than that for GS-9, step 1 - Position, within a White House operating unit, designated as not normally subject to change as a result of Presidential transition - Position with the uniformed services - Position in which member of the foreign service is serving that does not require advice and consent of Senate.

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Relationship among the three groups



Excluded:

SGEs
Career employees
Career SES
Career Senior Foreign Service
Uniformed Service Commissioned Officer

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Appointed by the President to position at Level II of the Executive Schedule

???

Must be able to check **both** boxes

☐

Position classified above GS-15 or, if not under the General Schedule, position's rate of basic pay $\geq$ 120% of minimum rate of basic pay payable for GS-15. SGEs are excluded.

☐

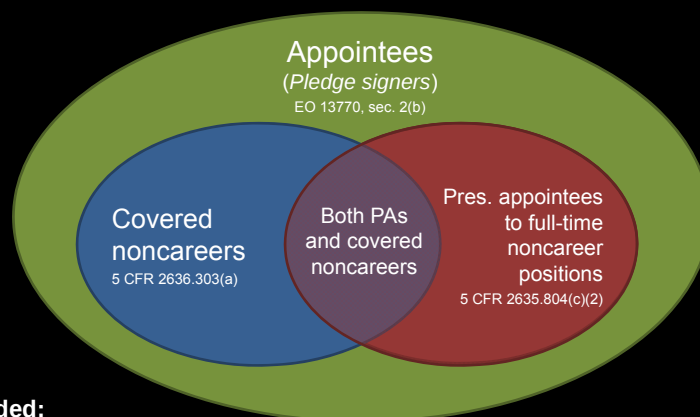
- ☐ Appointed by President to a position described in the Executive Schedule (5 U.S.C. §§ 5312-5317) or to a position that by statute or as a matter of practice, is filled by Presidential appointment*; or
- ☐ Noncareer member of the Senior Executive Service or of another SES-type system; or
- ☐ Schedule C or similar position under an agency-specific statute; or
- ☐ Noncareer executive assignment position or to a similar position under an agency-specific statute.

* Excludes positions within the uniformed services and positions within the foreign service below level of Assistant Secretary or Chief of Mission.



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Relationship among the three groups



Excluded:

SGEs
Career employees
Career SES
Career Senior Foreign Service
Uniformed Service Commissioned Officer

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Part II:

Where will you encounter ethics authorities that apply specifically (or differently) to noncareer employees?



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Part II:

- Entering government
- Gifts
- Outside activities
- Post employment



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Entering government

Exec. Order 13770, sec. 1

	Appointee EO 13770, sec. 2(b)	Covered noncareer 5 CFR 2636.303(a)	Presidential appointee 5 CFR 2635.804(c)(2)
Signing the Ethics Pledge			
Appointees entering government <i>Paragraph 6 of the Ethics Pledge</i>			
Lobbyists entering government <i>Paragraph 7 of the Ethics Pledge</i>			

* Applies if appointee was a registered lobbyist within 2 years before date of appointment.

Paragraphs 6 and 7 are revolving-door bans for appointees and lobbyists entering government, respectively.

For further information, please see DO-17-02 and DO-17-03, as well as DO-09-003, DO-09-005, DO-09-010, DO-09-011, DO-09-014, and DO-09-020.

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Gifts

Exec. Order 13770, sec. 1, par. 5

	Appointee EO 13770, sec. 2(b)	Covered noncareer 5 CFR 2636.303(a)	Presidential appointee 5 CFR 2635.804(c)(2)
Lobbyist gift ban <i>Paragraph 5 of the Ethics Pledge</i>			

Prohibits appointees from accepting gifts from registered lobbyists or lobbying organizations for the duration of service as an appointee.

Operates in addition to the OGE gift rules at 5 C.F.R. 2635 subpart B. For further information, please see DO-17-02, DO-17-03, and DO-09-007.

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Examples of applicable authorities: outside activities

- 18 U.S.C. §§ 203-209
- Standards of Conduct
 - Impartiality
 - Misuse of position
 - Conflicting outside employment and activities
 - Outside earned income limitations ★
 - Service as an expert witness
 - Teaching, speaking, and writing ★
 - Fundraising
- Any agency supplemental regulations
- The Hatch Act
- The Emoluments Clause and 18 U.S.C. § 219
- Covered noncareers: 5 C.F.R. part 2636, subpart C ★

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Outside activities

	Appointee EO 13770, sec. 2(b)	Covered noncareer 5 CFR 2636.303(a)	Presidential appointee 5 CFR 2635.804(c)(2)
Outside earned income 15% limitation			Outside earned income banned
Outside earned income ban			
Compensation and fiduciary relationships			Outside earned income banned
Use of name and fiduciary relationships			✱
Compensation restriction on service as an officer/member of board			Outside earned income banned
Expanded def. of compensation and "relates to employee's official duties" (teaching, speaking, writing)			✱
Advance authorization required when teaching for compensation			Outside earned income banned

✱ Many Presidential appointees will also be covered noncareer employees.

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Outside activities

	Appointee EO 13770, sec. 2(b)	Covered noncareer 5 CFR 2636.303(a)	Presidential appointee 5 CFR 2635.804(c)(2)
Outside earned income 15% limitation			Outside earned income banned
Outside earned income ban			

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Outside earned income and compensation

5 C.F.R. § 2636.303(b)

Definition:

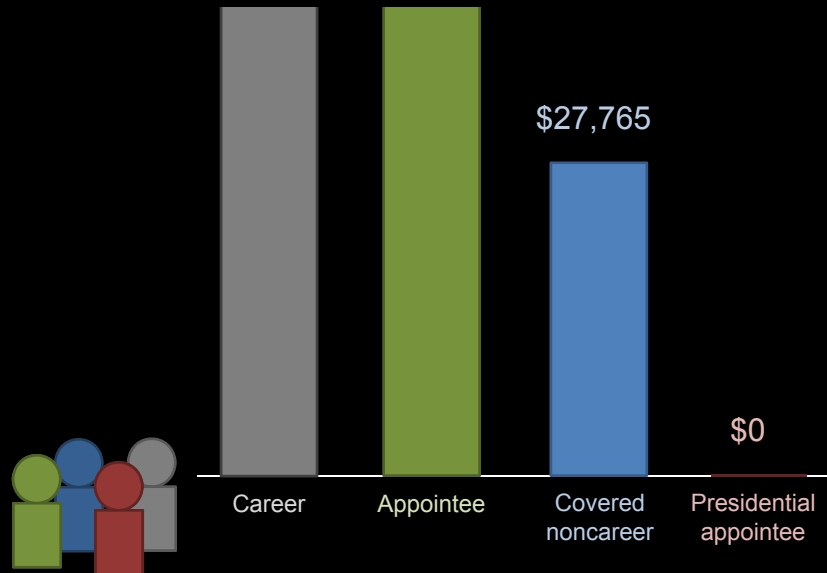
Wages, salaries, honoraria, commissions, professional fees and any other form of compensation for services other than salary, benefits and allowances paid by the United States Government

Does not include (for example):

Income from pensions and continuing benefits from previous employment/services, passive investment income, copyright royalties, income attributable to service with the military reserves or national guard
(Complete list available at § 2636.303(b))

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Allowable outside earned income (2017)



Sources: 5 U.S.C. app. § 501(a)(2), 5 C.F.R. § 2636.304, 5 C.F.R. § 2635.804(a) 29

Outside activities

	Appointee EO 13770, sec. 2(b)	Covered noncareer 5 CFR 2636.303(a)	Presidential appointee 5 CFR 2635.804(c)(2)
Outside earned income 15% limitation		●	Outside earned income banned
Outside earned income ban			●
Compensation and fiduciary relationships		●	Outside earned income banned
Use of name and fiduciary relationships		●	*

* Many Presidential appointees will also be covered noncareer employees.

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Compensation and fiduciary relationships

Covered noncareers

5 C.F.R. § 2636.305(a)(1)
5 U.S.C. app. §§ 502(a)(1) and (3)

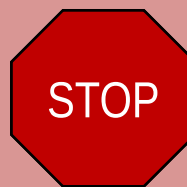
No compensation permitted for the following:

- Practicing a profession that involves a fiduciary relationship.
- Affiliating with or being employed to perform professional duties with an entity that provides services involving a fiduciary relationship.

Presidential appointees

5 C.F.R. § 2635.804(a)

Complete ban on receiving any outside earned income.



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Use of name and fiduciary relationships

5 C.F.R. § 2636.305(a)(2), 5 U.S.C. app. § 502(a)(2)

Covered noncareers

May not permit name to be used by any of the following that provides professional services involving a fiduciary relationship:

- firm
- partnership
- association
- corporation
- other entity

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Outside activities

	Appointee EO 13770, sec. 2(b)	Covered noncareer 5 CFR 2636.303(a)	Presidential appointee 5 CFR 2635.804(c)(2)
Outside earned income 15% limitation			Outside earned income banned
Outside earned income ban			
Compensation and fiduciary relationships			Outside earned income banned
Use of name and fiduciary relationships			
Compensation restriction on service as an officer/member of board			Outside earned income banned

* Many Presidential appointees will also be covered noncareer employees.

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Compensation and board service

Covered noncareers 5 C.F.R. § 2636.306 5 U.S.C. app. § 502(a)(4)	Presidential appointees 5 C.F.R. § 2635.804(a)
No compensation permitted for serving as an officer or member of a board. - Includes both for-profit and nonprofit entities, as well as any unit of state or local government - Does not prohibit serving without compensation	Complete ban on receiving any outside earned income. 

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Outside activities

	Appointee EO 13770, sec. 2(b)	Covered noncareer 5 CFR 2636.303(a)	Presidential appointee 5 CFR 2635.804(c)(2)
Outside earned income 15% limitation		●	Outside earned income banned
Outside earned income ban			●
Compensation and fiduciary relationships		●	Outside earned income banned
Use of name and fiduciary relationships		●	*
Compensation restriction on service as an officer/member of board		●	Outside earned income banned
Expanded def. of compensation and "relates to employee's official duties" (teaching, speaking, writing)		●	*
Advance authorization required when teaching for compensation		●	Outside earned income banned

* Many Presidential appointees will also be covered noncareer employees.

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Compensation for Teaching, Speaking, Writing 5 C.F.R. § 2635.807(a)

General Rule

Except as permitted...an employee, including a special government employee, shall not receive compensation from any source other than the government for teaching, speaking or writing that relates to the employee's official duties.



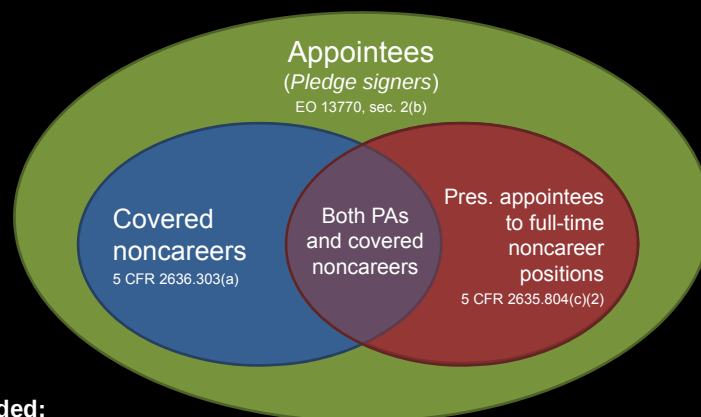
See also DO-08-006 36

Teaching for compensation

Covered noncareers 5 C.F.R. § 2636.307 5 U.S.C. app. § 502(a)(5)	Presidential appointees 5 C.F.R. § 2635.804(a)
May receive compensation for teaching only with advance authorization from the DAEO • “Teaching” not limited teaching in a formal setting • Contains standard for authorization • Still subject to 15% limitation on outside earned income	Complete ban on receiving any outside earned income. STOP

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Relationship among the three groups



Excluded:

SGEs
Career employees
Career SES
Career Senior Foreign Service
Uniformed Service Commissioned Officer

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Post-Employment

Exec. Order 13770, sec. 1, par. 1-4

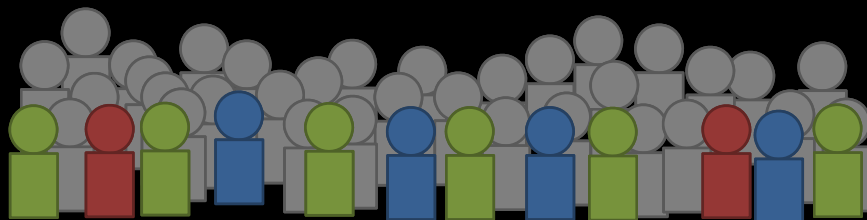
	Appointee EO 13770, sec. 2(b)	Covered noncareer 5 CFR 2636.303(a)	Presidential appointee 5 CFR 2635.804(c)(2)
Lobbying activities and former agency <i>Paragraph 1 of the Ethics Pledge</i>			
Senior employees <i>Paragraph 2 of the Ethics Pledge</i>			
Lobbying activities and certain Executive Branch officials <i>Paragraph 3 of the Ethics Pledge</i>			
Activities on behalf of foreign governments, foreign political parties <i>Paragraph 4 of the Ethics Pledge</i>			

* Applies if appointee is a senior employee under 18 U.S.C. 207(c).

For further information, please see DO-17-02 and DO-17-03.

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Thank you



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