

# UNITED STATES OFFICE OF GOVERNMENT ETHICS



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## LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: The Standards of Conduct as Applied to Personal Social Media Use

Use of social media has become prevalent among Federal executive branch employees and agencies. The U.S. Office of Government Ethics (OGE) is aware that agency ethics officials have an interest in understanding how the Standards of Ethical Conduct for Executive Branch Employees (Standards of Conduct), 5 C.F.R. part 2635, apply to the use of social media. This interest is reflected in the increased volume of questions that OGE receives from various agencies seeking advice in this area.

As an initial matter, the Standards of Conduct do not prohibit executive branch employees from establishing and maintaining personal social media accounts. As in any other context, however, employees must ensure that their social media activities comply with the Standards of Conduct and other applicable laws, including agency supplemental regulations and agency-specific policies. To assist employees and agency ethics officials in this endeavor, OGE is providing the following guidance regarding issues that agency ethics official have frequently raised concerning employees' obligations under the Standards of Conduct when using social media.<sup>1</sup>

### **1. Use of Government Time and Property**

When employees are on-duty, the Standards of Conduct require that they use official time in an honest effort to perform official duties. *See* 5 C.F.R. § 2635.705. As a general matter, this requirement limits the extent to which employees may access and use their personal social media

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<sup>1</sup> Employees should remain aware that other statutes and regulations outside of OGE's purview may further limit their use of social media. For example, the Hatch Act, 5 U.S.C. § 7321, *et seq.*, limits the extent to which executive branch employees may use social media to engage in certain political activities. *See* U.S. Office of Special Counsel, *Frequently Asked Questions Regarding the Hatch Act and Social Media*, April 4, 2012, available at: <https://ethics.od.nih.gov/topics/Hatch-Act-and-Social-Media-2012.pdf>

accounts while on duty. The Standards of Conduct also require employees to protect and conserve government property and to use government property only to perform official duties, unless they are authorized to use government property for other purposes. *See* 5 C.F.R. § 2635.704. For example, under the Standards of Conduct, a supervisor may not order, or even ask, a subordinate to work on the supervisor’s personal social media account. Coercing or inducing a subordinate to maintain the supervisor’s personal account would amount to a misuse of position and, if done on official time, a misuse of official time. The same would be true if the supervisor were to have a subordinate create content for the supervisor’s personal account, even if the subordinate were not involved in uploading the content to that account. 5 C.F.R. §§ 2635.702(a), 2635.705(b).

Where agencies have established policies permitting limited personal use of government resources by their employees, those policies control what constitutes an authorized use of government resources. *See, e.g.* OGE Informal Advisory Opinion 97 x 3. In some cases, such “limited use” policies may authorize employees to access their personal social media accounts while on duty.

## **2. Reference to Government Title or Position & Appearance of Official Sanction**

A question that frequently arises is the extent to which employees may reference their official titles on their personal social media accounts. In general, the Standards of Conduct prohibit employees from using their official titles, positions, or any authority associated with their public offices for private gain. 5 C.F.R. § 2635.702. The Standards of Conduct also require that employees avoid using their titles or positions in any manner that would create an appearance that the Government sanctions or endorses their activities or those of another. 5 C.F.R. §§ 2635.702; 2635.807(b).<sup>2</sup>

Employees’ use of personal social media ordinarily will not create the impermissible appearance of governmental sanction or endorsement which would be prohibited under § 2635.702(b). An employee does not, for example, create the appearance of government sanction merely by identifying his or her official title or position in an area of the personal social media account designated for biographical information. *See e.g.* OGE Legal Advisory LA-14-08; OGE Informal Advisory Opinion 10 x 1.

In evaluating whether a reference to an employee’s official title or position on social media violates the Standards of Conduct, 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. *See, e.g.* 5 C.F.R. §§ 2635.702(b); 2635.807(b); OGE Legal Advisory LA-14-08; OGE Informal Advisory Opinion 10 x 1. Relevant factors for agency ethics officials to consider in making the determination include:

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<sup>2</sup> Agency supplemental regulations may place further limitations on employees’ use of title or position, or may impose additional requirements such as mandating the use of a disclaimer.

- Whether the employee states that he or she is acting on behalf of the government;
- Whether the employee refers to his or her connection to the government as support for the employee's statements;
- Whether the employee prominently features his or her agency's name, seal, uniform or similar items on the employee's social media account or in connection with specific social media activities;
- Whether the employee refers to his or her government employment, title, or position in areas other than those designated for biographical information;
- Whether the employee holds a highly visible position in the Government, such as a senior or political position, or is authorized to speak for the Government as part of the employee's official duties;
- Whether other circumstances would lead a reasonable person to conclude that the government sanctions or endorses the employees' social media activities; or
- Whether other circumstances would lead a reasonable person to conclude that the government does not sanction or endorse the employees' social media activities.

Ordinarily, an employee is not required to post a disclaimer disavowing government sanction or endorsement on the employee's personal social media account. Where confusion or doubt is likely to arise regarding the personal nature of social media activities, employees are encouraged to include a disclaimer clarifying that their social media communications reflect only their personal views and do not necessarily represent the views of their agency or the United States. A clear and conspicuous disclaimer will usually be sufficient to dispel any confusion that arises. *See* OGE Legal Advisory LA-14-08.

### **3. Recommending and Endorsing Others on Social Media**

Social media networks, particularly those focused on job seeking, sometimes allow users to recommend or endorse the skills of other users. The Standards of Conduct permit employees to use social media to make such recommendations or endorsements in their personal capacity. It is not a misuse of position for employees to provide such endorsements merely because they have provided their official titles or positions in areas of their personal social media accounts that are designated for biographical information.

OGE is aware that at least one social media service automatically adds a user's name, title, and employer to any recommendation that the user posts regarding a job seeker. In any such case where title and employer name are added automatically, OGE does not consider a

recommendation to constitute a misuse of position because the recommendation is readily understood by users of the social media service to be personal, rather than official, in nature. An employee should not, however, affirmatively choose to include a reference to the employee's title, position, or employer in a recommendation, except where 5 C.F.R. § 2635.702(b) expressly permits such references.

#### **4. Seeking Employment Through Social Media**

The basic provisions governing seeking employment are set out in subpart F of the Standards of Conduct. For these purposes "seeking employment" includes not only the kinds of bilateral employment negotiations that would implicate 18 U.S.C. § 208, but also certain unilateral expressions of interest in employment by the employee. Specifically, in addition to actual negotiations, as described in section 2635.603(b)(1)(i), seeking employment also includes unsolicited communications by the employee regarding possible employment, as described in section 2635.603(b)(1)(ii), and any response by the employee, other than rejection, to an unsolicited overture from a prospective employer, as described in section 2635.603(b)(1)(iii). *See* OGE Informal Advisory Opinion 04 x 13.

Employees who are seeking or negotiating for employment through social media must comply with the applicable disqualification requirements of 5 C.F.R. § 2635.601, *et seq.*, 18 U.S.C. § 208, and any additional requirements found in agency supplemental regulations. Public financial disclosure filers who are negotiating or have an arrangement concerning future employment or compensation also must comply with the notification requirements found in section 17 of the Stop Trading on Congressional Knowledge Act of 2012. *See* 5 U.S.C. app. § 101, note; OGE Legal Advisories LA-13-06 and LA-12-01.

An employee is not considered to be seeking employment with any person or organization merely because the employee has posted a resume or similar summary of professional experience to the employee's personal social media account. Likewise, an employee is not considered to be seeking employment merely because a person or organization has viewed the employee's resume on that social media account or has sent an unsolicited message, including one containing a job offer, to the employee. An employee who receives an unsolicited message or job offer is seeking employment with the sender only if the employee responds to the message and the employee's response is anything other than a rejection. 5 C.F.R. § 2635.603.

An employee will be considered to be seeking employment with a person or an organization if the employee contacts that person or organization concerning future employment. In the age of social media, there are a multitude of ways that an employee might contact a prospective employer and thereby trigger the seeking employment rules. For example, an employee would trigger the seeking employment rules by sending a message directly to the organization, uploading a resume or application to the prospective employer's social media account for recruiting employees, or otherwise targeting the organization through a social media communication.

## **5. Disclosing Nonpublic Information**

The Standards of Conduct prohibit employees from disclosing nonpublic information to further their private interests or the private interests of others. *See* 5 C.F.R. § 2635.703. This prohibition applies without regard to the medium used for the unauthorized disclosure. In addition to the Standards of Conduct, other statutes and regulations prohibit the disclosure of specific categories of nonpublic information, such as classified or confidential information. Employees must follow the rules regarding the disclosure of nonpublic information found in the Standards of Conduct and all other applicable rules when using social media. The Standards of Conduct generally do not prevent employees from discussing or sharing government information that is publicly available. Employees may not, however, accept compensation for statements or communications made over social media that relate to their official duties. *See* 5 C.F.R. §§ 2635.807(a); 2635.703.

## **6. Personal Fundraising**

Employees may use personal social media accounts to fundraise for nonprofit charitable organizations in a personal capacity, but they must comply with 5 C.F.R. § 2635.808, the section of the Standards of Conduct that covers fundraising. As a general rule, fundraising solicitations over social media are permissible so long as the employee does not “personally solicit” funds from a subordinate or a known prohibited source. *See* 5 C.F.R. § 2635.808(c)(1).

Fundraising requests over social media are potentially visible to a wide audience of followers and connections. An employee who posts or publishes a general fundraising announcement or request over social media has not “personally solicited” any prohibited source or subordinate merely because the employee is connected with the prohibited source or subordinate through the social media network. The same is true even if the prohibited source or subordinate views, comments on, or responds to the post. However, an employee may not respond to inquiries posted by prohibited sources or subordinates in reference to the fundraising request. Furthermore, an employee may not specifically reference, link to, or otherwise target a subordinate or known prohibited source when fundraising over social media. An employee doing so will be considered to have “personally solicited” that person in violation of 5 C.F.R. § 2635.808(c)(1). *See* OGE Informal Advisory Opinion 93 x 19; OGE Informal Advisory Opinion 93 x 8.

Additionally, employees may not use their official titles, positions, or authority associated with their positions to further fundraising efforts. *See* 5 C.F.R. § 2635.808(c)(2); OGE Informal Advisory Opinion 96 x 2. Employees are not considered to have used their official titles, positions, or authority associated with their positions to further fundraising efforts merely because they have provided this information in areas of their personal social media accounts designated for biographical information.

## **7. Official Social Media Accounts**

Many Federal agencies maintain one or more official social media accounts for use in conducting official business. Subject to applicable legal authorities, each agency determines the

purposes for which its official accounts may be used. *See, e.g.* OGE Informal Advisory Opinions 93 x 6 and 93 x 24. When employees use these official accounts, they must do so in accordance with applicable agency directives, regulations, and policies. *See* 5 C.F.R. § 2635.704(a); OGE Informal Advisory Opinion 97 x 3. Put simply, official accounts are for official purposes.

OGE encourages agencies to adopt policies indicating which employees are authorized to access official accounts and defining the authorized uses for those accounts. Agency officials responsible for social media accounts may wish to visit the General Services Administration's online Federal Social Media Community of Practice and Social Media Registry at <http://www.digitalgov.gov/>.

### **Additional Information**

In light of the ever evolving nature of social media, the foregoing advice is not intended to be comprehensive. OGE expects to issue additional guidance in the future addressing questions outside the scope of this Legal Advisory. Designated Agency Ethics Officials with questions regarding the application of the Standards of Conduct to social media may contact their assigned OGE Desk Officers.