

Welcome to the FTC!



Let's talk ethics.

Rev. September 2022.

Table of Contents

Part One- Ethics

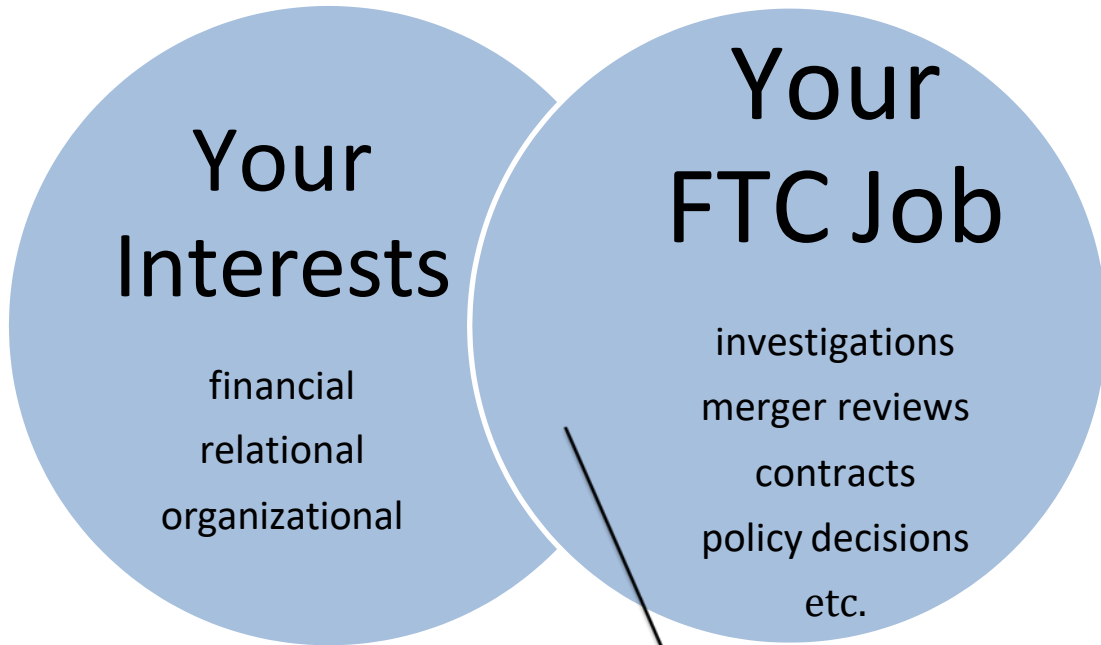
The number one thing to consider BEFORE starting at the FTC.....	2
What to expect on your first day of work.....	6
What to expect on your last day of work (and why you need to care now)	7
So you want to read the rules yourself (we don't blame you, go ahead!).....	8
You have questions. Or maybe you just like talking to a real live person. Contact us	9
Our lawyers made us give this to you (the ethics rite of passage since 1989).....	10

Part Two- Not really ethics, but important stuff to know regardless..... 12

Summary of Hatch Act Restrictions	13
Overview of Confidentiality and Disclosure Issues.....	15
Limited Personal Use of Government Office Equipment.....	21

SCREENING FOR CONFLICTS OF INTEREST*

*the number one thing to consider before starting at the FTC



**Your
Interests**

financial
relational
organizational

**Your
FTC Job**

investigations
merger reviews
contracts
policy decisions
etc.

Do not work on FTC matters that affect your interests. When in doubt, consult an ethics official for guidance before working on a matter.

Please use the Intake Worksheet on the next page to identify your financial, relational, and organizational interests.

Conflicts of Interest Intake Worksheet

(circle all that apply to you*)

What are your financial interests?

- Stocks
- Bonds
- Family trusts
- Mutual funds
- Exchange-Traded Funds
- 401(k) and other employment retirement plans
- Individual Retirement Accounts
- 529 college savings plans
- Invoices owed to you
- Future payments from former employers
- Business partners
- Rental properties
- Royalties or online advertising revenues

What are your “covered relationships” (i.e. relationships the ethics rules care about)?

- Employers and clients (current and prospective) of a spouse, parent, or child
- Close relatives
- Roommates
- Organizations in which you are an active participant
- Person with whom you have a business, contractual or other financial relationship
- Employers and clients you served within the last year usually 2 years for certain senior employees

Do you have ties to any organizations?

- Officer or Director
- Trustee
- Consultant
- Agent or Attorney
- Employee
- Business owner
- Founding member
- Contributor
- Advisory/Editorial Board member
- Steering Committee member
- Non-profit founder
- Lead Volunteer

*These are the entities and individuals you need to watch for in your FTC work. If you are assigned a matter that involves or affects these persons, please consult us before working on the matter.

Common myths about the conflicts rules:

“Someone else will make sure I don’t get involved in any matter where I have a conflict.”

While we wish this were true, the federal ethics rules rely largely upon your being aware and exercising good judgment. We can help you draft a screening memo to circulate to those who assign you work, but it is ultimately your responsibility to screen for conflicts.

“My former clients don’t matter for screening purposes.”

The ethics rules require you to avoid all matters involving any client you served in the past year, for a period of one year. If you are a political appointee signing an Ethics Pledge, then both time periods are extended (usually to two years).

“This doesn’t apply to me usually because I’m poor.”

Even if your net worth is less than zero (thanks student loans!), the conflicts rules cover relational and organizational conflicts (i.e. former employers and second jobs, including unpaid internships, and the interests of your family members).

“This doesn’t apply to me because I don’t even know what I own—that’s my investment manager’s job/my spouse’s job/my spouse’s investment manager’s job.”

Sadly, not knowing what you own doesn’t exempt you from the conflicts rules.

“This doesn’t apply to me; I rank too low or I won’t get to make any of the FTC decisions or I’m not being paid by the FTC or I’m only here as a temporary expert or I’m not even a US Citizen.”

If you have this packet, the conflict of interest rules apply to you.

*Side note: If you are going to be a GS-14 or higher, then you will need to fill out a financial disclosure form (please contact an ethics team member now to get a head start).

“I only need to screen for conflicts once and then I can forget about it.”

FTC matters are moving targets and the companies or firms that are involved can change. Your personal interests can change too. Screening for conflicts is a continuous duty. It’s your responsibility to always be on the lookout.

“Better to start working on a matter and see what is really going on before screening for conflicts.”

Not a good idea. As soon as you know you have an interest in an entity or individual involved, stop working (or never start working) and get advice from the ethics team.

“I can’t tell my boss I’m recused from this matter because she’ll think less of my job performance.”

Your boss cares about staffing matters with folks in compliance with the ethics rules, probably more than you think. Also, the ethics team is happy to talk to supervisors on your behalf if you’d prefer for us to do so.

What to expect on DAY ONE

(1) You will have a 30 minute presentation by an ethics official where we cover the following topics:

- Gifts from outside sources
- Gifts between employees
- Conflicts of Interest
- Impartiality
- Outside Employment (including teaching, speaking, and writing)
- Post-Government Employment Rules
- Misuse of Government Position and Time
- Charitable Fundraising Restrictions
- Political Activities

NOTE: You will be required to confirm your receipt of this training session by entering the appropriate info into our tracking database. A link will be emailed to you by the ethics team.

(2) You will need to go through the ethics approval process for most outside positions, including:

- second jobs
- side businesses (*e.g.* realtor, consultant, tax preparer, etc.)
- volunteer positions
- writings for pay or for free (both academic and/or online)

(3) If you are a GS-14 employee or above, you will have 30 days to turn in your financial disclosure form. We will send you an email with a link to the forms and the instructions. Feel free to contact an ethics team member now to get a head start on your forms.

What to expect on your LAST DAY at the FTC

(i.e. a preview of the ethics guidance we give departing employees)

- What are Post-Government Employment Restrictions?
 - A set of rules that individuals need to abide by once they leave government service.

- What are the prohibitions?
 - **Lifetime ban** on representing others to the U.S. on behalf of another person concerning specific party matters you worked on personally and substantially.
 - **Two-year ban** on representing others to the U.S. on behalf of another person concerning a specific party matter for which you had official responsibility within your last year of service.
 - **Senior employees cooling off period: One-year ban** on representing others to the FTC concerning any official matter.
 - Ethics Pledge signers have additional restrictions.

- What is the FTC's clearance rule?
 - If an FTC matter was open during your time here, you likely need to receive clearance before you work on it for a new employer. If you worked on the matter while at the FTC or had access to significant non-public FTC information about the matter, you are unlikely to get clearance.

- Is there a penalty for violating these rules?
 - Yes, 18 U.S.C. § 207 is a criminal statute.

- How can I make my post- government employment life much easier?
 - Keep a personal, non-public list of every FTC matter on which you work. You will thank yourself later.

Where to find the text of the ethics rules

Ethics Laws & Regulations: A number of statutes and regulations govern the conduct of executive branch employees. You can find summaries of or links to most of them on the FTC's Ethics Intranet page or the U.S. Office of Government Ethics' homepage (<http://www.oge.gov/>). Referring to this online information, however, should not take the place of talking to an FTC ethics official whenever you are unsure of the proper course of conduct.

- **Code of Ethics:** 14 General Principles (page 10 of this packet)
- **Criminal Statutes:**
 - 18 U.S.C. § 201: Bribery of public officials and witnesses
 - 18 U.S.C. § 202: Definitions
 - 18 U.S.C. § 203: Compensation to Members of Congress, officers, others in matters affecting the Government
 - 18 U.S.C. § 205: Activities of officers and employees in claims against and other matters affecting the Government
 - 18 U.S.C. § 207: Restrictions on former officers, employees, and elected officials of the executive and legislative branches
 - 18 U.S.C. § 208: Acts affecting a personal financial interest
 - 18 U.S.C. § 209: Salary of Government officials and employees payable only by United States
- **Employee Standards of Conduct:** 5 C.F.R. Part 2635
- **FTC Supplemental Regulations:**
 - FTC Clearance Regulation (Post-Government Employment) 16 C.F.R. §§ 4.1(b) and (c)
 - FTC Outside Employment Regulation 5 C.F.R. § 5701.101
 - FTC Charitable Fundraising Regulation 5 C.F.R. § 5701.102
- **Stop Trading on Congressional Knowledge Act of 2012 ("STOCK Act"):** Pub. L. No. 112-105 (2012).

Your Agency Ethics Officials

Lorielle L. Pankey is an Associate General Counsel in the Office of the General Counsel where she advises FTC staff on a variety of federal ethics matters. Lorielle administers the agency's federal ethics program as the Designated Agency Ethics Official. Prior to her arrival at the FTC in 2005, Lorielle was an associate at Steptoe & Johnson LLP. Lorielle received her J.D. from Harvard Law School in 2003 and a B.A. Summa Cum Laude in Journalism, Public Relations, and Advertising from Temple University in 2000. Lorielle can be reached at X3108. Email: lpankey@ftc.gov.

Craig Bannon joined the FTC's Office of the General Counsel as an ethics attorney in January 2017. Craig helps administer the agency's ethics program as the Alternate Designated Agency Ethics official. Prior to that, he worked for about seven years at the Defense Logistics Agency in Philadelphia, PA. At DLA, he developed expertise in federal ethics law, acquisition and fiscal law, and employment and labor law. He received his J.D., *summa cum laude*, from the University of Baltimore Law School in 2009. He is also a graduate of the Pennsylvania State University where he received a B.S. in Business Logistics and a B.A. in Political Science. Craig can be reached on x2067. Email: cbannon@ftc.gov.

Jeremy Wong joined the FTC's Office of General Counsel as an ethics attorney in April 2019. Prior to that, he worked for two years for the Department of Veterans Affairs as an Appellate Attorney before the Court of Veterans Appeals and for about three years as an associate at Milbank, Tweed, Hadley & McCloy LLP. Jeremy received his J.D. from the University Virginia Law School in 2014 and received a B.S. Summa Cum Laude in Business Marketing and a B.A. Summa Cum Laude in English at Arizona State University in 2010. Jeremy can be reached at X2862. Email: wong2@ftc.gov.

Andreea Micklis joined the FTC's Office of General Counsel as an ethics attorney in April 2022. Prior to that, she worked in private practice and for public interest organizations both nationally and internationally. Andreea received her J.D. from Harvard Law School in 2005 and her B.A. Summa Cum Laude in Economics and Spanish from Vanderbilt University in 2001. Andreea can be reached at X2432. E-mail: amicklis@ftc.gov.

Regina L. Duarte is an ethics program specialist with the Office of General Counsel and helps maintain the agency's ethics program. Regina's responsibilities include reviewing financial disclosures and conducting ethics training for the FTC's DC and regional offices. Regina also approves free attendance to events, the acceptance of other gifts, and non-federal travel reimbursement requests to ensure there are no appearance issues. Regina joined the agency in 2000 in the Office of General Counsel. Before joining the agency, Regina worked as a legal assistant for many years in the private sector. Regina can be reached at x3547. Email: rduarte@ftc.gov.

The 14 General Principles of Federal Ethics

An ethics rite of passage since 1989

The following general principles apply to every employee and backstop the Standards of Conduct. Where a situation is not covered by the Standards, employees shall apply the principles set forth below in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, unless permitted by a regulatory exception, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities. (FYI- the FTC has a supplemental regulation for clearing most outside activities.)

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Part Two

**Not really ethics, but important stuff to
know regardless**



THE HATCH ACT

Permitted and Prohibited Activities for Most Federal Employees

Generally, federal employees, unless further restricted*, may actively participate in political management and political campaigns. Accordingly, these employees may engage in "political activity" on behalf of a political party or partisan political group (collectively referred to as "partisan groups") or candidate in a partisan election as long as it is not on duty or in the workplace. Political activity refers to any activity directed at the success or failure of a partisan group or candidate in a partisan election.

For more information, contact the U.S. Office of Special Counsel at (202) 254-3650 or hatchact@osc.gov.

-
- **May** be candidates in non-partisan elections.
 - **May** register and vote as they choose.
 - **May** assist in voter registration drives.
 - **May** contribute money to partisan groups and candidates in partisan elections.
 - **May** attend political fundraisers.
 - **May** attend and be active at political rallies and meetings.
 - **May** join, be active, and hold office in partisan groups.
 - **May** sign and circulate nominating petitions.
 - **May** campaign for or against candidates in partisan elections.
 - **May** make campaign speeches for candidates in partisan elections.
 - **May** distribute campaign literature in partisan elections.
 - **May** campaign for or against referendum questions, constitutional amendments, or municipal ordinances.
 - **May** express opinions about political issues.
 - **May** express opinions about partisan groups and candidates in partisan elections while not at work or using official authority.
 - **May not** be candidates in partisan elections.
 - **May not** use official authority to interfere with an election or while engaged in political activity.
 - **May not** invite subordinate employees to political events or otherwise suggest that they engage in political activity.
 - **May not** knowingly solicit or discourage the political activity of any person with business before the agency.
 - **May not** solicit, accept, or receive political contributions (including hosting or inviting others to political fundraisers) unless both persons are members of the same federal labor or employee organization, the person solicited is not a subordinate employee, the solicitation is for a contribution to the organization's political action committee, and the solicitation does not occur while on duty or in the workplace.
 - **May not** engage in political activity while on duty, in the workplace, wearing a uniform or official insignia, or in a government vehicle. For example:
 - **May not** wear, display, or distribute partisan materials or items.
 - **May not** perform campaign-related chores.
 - **May not** make political contributions.
 - **May not** use email or social media to engage in political activity.

*.All career SES employees, ALJs, and employees identified at 5 U.S.C. § 7323(b)(2)(13)-(3) are further restricted.



THE HATCH ACT

Permitted and Prohibited Activities for Federal Employees Subject to Further Restrictions*

Generally, federal employees who are considered "further restricted" are prohibited from taking an active part in partisan political management or partisan political campaigns. Specifically, these employees may not engage in "political activity" on behalf of a political party or partisan political group (collectively referred to as "partisan groups") or candidate in a partisan election. Political activity refers to any activity directed at the success or failure of a partisan group or candidate in a partisan election.

For more information, contact the U.S. Office of Special Counsel at (202) 254-3650 or hatchrct@osc.gov.

-
- **May** be candidates in non-partisan elections.
 - **May** register and vote as they choose.
 - **May** assist in non-partisan voter registration drives.
 - **May** contribute money to partisan groups and candidates in partisan elections.
 - **May** attend political rallies, meetings, and fundraisers.
 - **May** join partisan groups.
 - **May** sign nominating petitions.
 - **May** participate in campaigns where none of the candidates represent a political party.
 - **May** campaign for or against referendum questions, constitutional amendments, or municipal ordinances.
 - **May** express opinions about political issues.
 - **May** express opinions about partisan groups and candidates in partisan elections while not at work or using official authority.
 - **May not** be candidates in partisan elections.
 - **May not** use official authority to interfere with an election or while engaged in political activity.
 - **May not** invite subordinate employees to political events or otherwise suggest that they engage in political activity.
 - **May not** knowingly solicit or discourage the political activity of any person with business before the agency.
 - **May not** solicit, accept, or receive political contributions (including hosting or inviting others to political fundraisers) unless both persons are members of the same federal labor or employee organization, the person solicited is not a subordinate employee, the solicitation is for a contribution to the organization's political action committee, and the solicitation does not occur while on duty or in the workplace.
 - **May not** engage in political activity while on duty, in the workplace, wearing a uniform or official insignia, or in a government vehicle. For example:
 - o **May not** wear or display partisan materials or items.
 - o **May not** make political contributions.
 - o **May not** use email or social media to engage in political activity.
 - **May not** be active in partisan political management. For example:
 - o **May not** hold office in partisan groups.
 - o **May not** organize or manage political rallies or meetings.
 - o **May not** assist in partisan voter registration drives.
 - **May not** be active in partisan political campaigns. For example:
 - o **May not** make campaign speeches or otherwise campaign for or against candidates.
 - o **May not** distribute campaign materials, including via email or social media.
 - o **May not** circulate nominating petitions.

*Further restricted agencies and employees include:

- o Election Assistance Commission
- o Federal Election Commission
- o Office of the Director of National Intelligence
- o Central Intelligence Agency
- o Defense Intelligence Agency
- o National Geospatial Intelligence Agency
- o National Security Agency
- o National Security Council
- o National Security Division (Department of Justice)
- o Criminal Division (Department of Justice)
- o Federal Bureau of Investigation
- o Secret Service
- o Office of Criminal Investigation (IRS)
- o Office of Investigative Programs (Customs Service)
- o Office of Law Enforcement (ATF)
- o Merit Systems Protection Board
- o U.S. Office of Special Counsel
- o Career members of the Senior Executive Service
- o Administrative law judges, administrative appeals judges, and contract appeals board members

Rev. Feb. 2016

OVERVIEW OF CONFIDENTIALITY AND DISCLOSURE ISSUES

August 14, 2013

This memorandum provides an overview of confidentiality and disclosure issues applicable to the FTC and its employees. Chapter 15 ("Confidentiality and Access") and Chapter 3 ("Investigations") of the FTC Operating Manual (OM) cover these issues in more detail.

General Disclosure Issues

What information is subject to limitations on disclosure?

As a general matter, staff may not disclose nonpublic agency information. Nonpublic agency information can include information submitted to the agency, information about the Commission's investigations and actions and information about internal agency deliberations. Maintaining the confidentiality of nonpublic agency information is important because the Commission's law enforcement missions depend on access to sensitive, nonpublic information from businesses and consumers.

Unauthorized disclosure of nonpublic information submitted to the Commission is subject to criminal prosecution and punishable by fines or imprisonment under the FTC Act, 15 U.S.C. § 50. Under certain circumstances, unauthorized disclosure of nonpublic agency information is subject to criminal sanction under the Trade Secrets Act, 18 U.S.C. § 1905, the Larceny Act, 18 U.S.C. § 641, and SEC Rule 10b-5. Further, government-wide ethics rules and the recently-enacted STOCK Act prohibit government employees from using nonpublic information for personal benefit. 5 C.F.R. § 2635.703; P.L. 112-105. Disclosures of nonpublic information may result in disciplinary action. Commission attorneys also may be subject to disciplinary action by state bar authorities if they fail to protect the confidences of their client, the FTC. However, disclosure of nonpublic agency information may be permissible in circumstances defined by statute or FTC rule, as discussed below.

Which statutes limit disclosure of agency information by FTC employees?

The disclosure of materials submitted to the Commission is strictly limited by the FTC Act and the Clayton Act. These provisions, discussed in more detail in OM Chapter 15.4, include the following:

- Sections 21(b) and 21(f) of the FTC Act, together with Commission Rule 4.10(d), limit disclosure of information in a law enforcement investigation if the information was submitted pursuant to compulsory process or if it was submitted voluntarily in lieu of such process pursuant to a request and designated confidential.
- Section 6(f) of the FTC Act limits disclosure of trade secrets and confidential or privileged commercial or financial information.
- Section 7A(h) of the Clayton Act limits disclosure of information obtained from filings and submissions under the Hart-Scott-Rodino Act.
- Section 21(c) of the FTC Act requires pre-disclosure notice to the submitter where the Commission intends to disclose documents marked "confidential" by a submitter if the Commission or its designee determines that such documents are not in fact confidential.

What information may staff disclose, and how?

Public Record. Commission staff may disclose materials on the public record. Certain documents must be placed on the public record, except to the extent that the submitter requests confidentiality and the General Counsel or the General Counsel's designee grants the request. Rule 4.9(b) and (c).

Availability of the Freedom of Information Act (5 U.S.C. § 552). Commission staff may inform members of the public about the Commission's FOIA procedures, which are set forth in Rule 4.11(a). The FOIA process is also described on the Commission's FOIA web page, www.ftc.gov/foia/index.htm, which includes a form for FOIA requesters. Any written request from the public for records, even if it is not labeled as a FOIA request, should be forwarded to the FOIA branch.

Materials may not be disclosed just because they were released under FOIA to another requester. However, certain materials released under FOIA are posted on the Commission's website pursuant to Rule 4.9(b)(10)(ix) and are therefore public records. Staff may release these materials even absent a new FOIA request.

Certain general information. Commission staff may discuss general issues based on publicly available information.

Existence of Investigations. The existence of an FTC investigation is nonpublic information. Pursuant to Commission policy, however, the existence of a non-merger investigation may be disclosed publicly if the Office of Public Affairs (OPA) determines that a target has disclosed, in either a press release or a public filing with another governmental body, that it is the subject of an investigation. 63 FR 63477 (Nov. 13, 1998). The existence of a merger investigation may be disclosed if OPA determines that a party to the underlying transaction has disclosed the existence of the transaction in either a press release or a public filing with another governmental body. 62 FR 18630 (Apr. 16, 1997). Staff must get OPA authorization for any disclosure to be made under this authority. Nothing in this policy affects the authority of the Commission to make appropriate disclosures concerning the existence of a nonpublic investigation whenever it determines that doing so would be in the public interest. *Id.* In this circumstance, staff must obtain Commission authorization to make the disclosure. Consult OPA or OGC for further guidance about when the existence of an investigation may be disclosed.

In response to a complaint or inquiry about a general practice, Commission staff may indicate that staff is concerned about the practice and that any information transmitted to the agency will be added to the agency's files. OM Ch. 16.9.1

Disclosures in investigations. The existence of any investigation may be disclosed to potential witnesses or other third parties only to the extent necessary to advance the investigation. Rule 2.6. Commission staff should make clear that the matter is confidential, that the purpose of the investigation is merely to obtain information, and that no conclusions have been reached or inferences drawn as to whether violations of law have occurred. OM Ch. 16.9.3.4. These disclosures should be limited, particularly where they may prejudice the target. In dealing with

potential witnesses or other third parties, Commission staff may not disclose specific information submitted to the Commission that is not otherwise available from public sources. For example, while Commission staff may contact customers identified through a customer list submitted to the Commission, the customer list itself may not be revealed to third parties or other members of the public.

Further disclosures may be made in taking oral testimony or in litigation. Rules 4.10(f) and (g); OM Ch. 15, Appendix.

Disclosures to other agencies. The Bureau Directors and their designees have authority to disclose to federal, state, local and foreign government agencies: (1) materials from submitters who consent to disclosure; and (2) complaints received from consumers who did not request confidentiality. 62 FR 15185 (1997). In addition, the Director of the Bureau of Consumer Protection (BCP) has delegated authority to share certain information with a number of foreign law enforcement agencies. 72 FR 9531 (2005). When parties to a merger consent and certain other conditions are met, staff also may disclose specific information to states as part of a program to facilitate federal-state cooperation in merger enforcement. OM Ch. 15.7.3.

Commission staff may disclose an investigation to another agency for the purpose of furthering the investigation, taking care not to reveal specific information submitted to the Commission. If a state or federal agency wants more information, it may file an access request with the General Counsel, the General Counsel's designee, or a liaison officer under Rule 4.11 (c) or 4.11 (d). Most nonpublic materials may be shared with other law enforcement agencies on a confidential basis. Commission staff may also describe an investigation to a federal or state agency in general terms, even where such disclosure will not further the Commission's own investigation, in order to provide that agency with sufficient information to file an access request.

The MOU between the FTC and the Consumer Financial Protection Bureau (CFPB) contains specific requirements for sharing between the two agencies. In general, FTC staff are prohibited from disclosing information obtained from the CFPB to any third party (including to another law enforcement agency) unless otherwise required by law or authorized under the MOU. The restrictions on sharing include even the existence of a CFPB investigation or examination. The MOU is available at <http://old.ftc.gov/os/2012/01/120123ftc-cfpb-mou.pdf>. In addition, FTC staff should continue to use 4.11(c) requests when sharing information with the CFPB that was obtained from a target or third-party submitter in an FTC investigation.

Requests from foreign law enforcement agencies for nonpublic records consistent with the U.S. SAFE WEB Act are initially handled by the Office of International Affairs and approved by BCP and the General Counsel (or a designee) in most circumstances. See FTC Act §§ 6(f), 21(b)(6); Rule 4.11(j). These provisions authorize sharing with foreign agencies when the materials requested are to be used to investigate or enforce certain foreign consumer protection laws, to further a Commission investigation or enforcement proceeding, or to enforce certain criminal laws with the approval of the Attorney General. These provisions do not allow the sharing of information obtained by the FTC in antitrust investigations. Further guidance and relevant forms are available on the intranet.

The Director of the Bureau of Competition may respond to access requests for records and other materials pursuant to an agreement under the International Antitrust Enforcement Assistant Act, 15 U.S.C. § 6201 et seq., after providing notice to the Commission and if no Commissioner objects. Rule 4.11(i). Currently, there is only one agreement in effect.

Disclosures that facilitate the conduct of agency business. The General Counsel (or a designee) may authorize staff to disclose items or categories of nonpublic materials if disclosure would facilitate the conduct of agency business and would not otherwise be prohibited. Requests for such authorization should be forwarded through the relevant Bureau. Rule 4.11(h).

Disclosures in writing samples. The General Counsel (or a designee) may authorize employees to use nonpublic memoranda as writing samples, to the extent consistent with protections for submitter's information. Rule 4.11(f).

Disclosures in teaching, lecturing, or writing. The General Counsel (or a designee) may authorize the use of nonpublic information in teaching, lecturing, or writing, to the extent consistent with protections for submitters' information. Rule 4.11(g).

Collecting, Managing, and Retaining Information

How do statutes protecting rights to privacy affect the collection and use of information?

The Privacy Act, 5 U.S.C. § 552a, restricts the collection, maintenance, use and dissemination of information that will be maintained in a "system of records." A "system of records" is a group of records under the agency's control from which information is retrieved by an individual's name or identifier. The Right to Financial Privacy Act (RFPA), 12 U.S.C. § 3401 et seq., restricts access to, and disclosures of, certain customer financial records in the possession of financial institutions. See OM Chs. 15.10, 15.11. Other privacy statutes, such as the Electronic Communications Privacy Act (ECPA), 18 U.S.C. §§ 2701-03, and the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. No. 104-191, may limit or prohibit the agency from obtaining or disclosing information pertaining to individuals. Further guidance is available from OGC and on the Privacy Steering Committee and BCP intranet pages.

What are the custodial requirements for documents submitted to the Commission?

Section 21(b) of the FTC Act and Rule 2.16 impose special accountability requirements for documents submitted to the Commission pursuant to compulsory process, and the Commission extends similar treatment to other submitted documents. OM Ch. 3.3.6.6.4.3. Commission staff who receive submitted documents, including individuals designated as custodian or deputy custodian of documents, should be thoroughly familiar with these provisions.

Which provisions govern the disposition of documents submitted to the Commission?

Before disposing of submitted documents, Commission staff should consult the document return requirements contained in Section 21(b) of the FTC Act and Rule 4.12, as well as the record

retention requirements of the Federal Records Act, 44 U.S.C. § 3301. OM Ch. 15.12. Specific guidance on the Federal Records Act retention and disposition schedule may be obtained from the Records and Filing Office.

Responding to FOIA Requests

As described above, requests from the public for records are processed under the Freedom of Information Act. Any such written request should be forwarded to the FOIA branch.

When the FOIA branch receives a request, it contacts the appropriate staff. Staff is responsible for locating responsive documents and should be prepared to demonstrate the adequacy of the search in an affidavit should the issue be litigated. Staff also is responsible for preserving responsive records during the pendency of the FOIA request and appeals and for recommending release or withholding of responsive records. A recommendation to withhold documents must be based on one or more exemptions from the FOIA's mandatory disclosure requirements. OM Ch. 15.4.

Responding to Congressional Requests

Congressional access requests are coordinated through the Office of Congressional Relations and assigned to the staff who are most familiar with the substance of the matter at issue. The procedures for processing requests from Congress are described in OM Chapter 15.6.

Responding to Confidentiality Requests

Submitters of information to the Commission often request confidentiality protections. If the materials at issue routinely are put on the public record under Rule 4.9(b), the General Counsel (or a designee) will consider confidentiality requests under Rule 4.9(c) prior to disclosure.

If the materials are not subject to routine placement on the public record, specific assurances of confidentiality should not be provided beyond the protections of the FTC Act and the Commission's Rules. However, the protections routinely accorded to most materials submitted to the Commission, as described in Chapter 15.4 of the Operating Manual and further summarized in Illustration 1 of that Chapter, are substantial.

Commission staff should not make commitments to maintain confidentiality beyond those set forth in Illustration 1, a sample letter in response to a request for confidentiality of submitted documents. For example, staff should not negotiate any agreement that purports to limit the Commission's authority to make disclosures authorized by law.

Whistleblower Protection Enhancement Act of 2012

The nondisclosure provisions discussed in this memorandum are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation,

or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or

(4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this memorandum and are controlling.

Limited Personal Use of FTC Property

Chapter 5: Section 300 (Part 4 Excerpt) - Standards of Conduct (Updated March 2019)

In the execution of the Commission's work, employees have access to a wide array of government property. Generally, applicable standards of conduct prohibit employees from using government property to include items such as telephones, computers, e-mail, mobile devices (e.g., smartphones, laptops, and other similar equipment), fax machines, photocopiers, office supplies, and other government property for any purpose other than official government business. However, to avoid undue disruption during the workday and to facilitate the agency's mission, the agency has authorized the limited personal use of government property, including information technology, by FTC employees. Personal use of government property is a privilege, not a right, and it may be revoked or limited at any time. Each employee is responsible for reviewing this policy and using care and good judgment to ensure that any personal use of government property is authorized, appropriate, and complies with this policy.

A. *Permissible Use.*

(1) Except for the prohibited uses listed below, employees may occasionally use government property for personal purposes when such use:

- (a) Involves minimal or no additional expense to the government;
- (b) Is reasonable in duration and frequency;
- (c) Does not impede the employees' or their colleagues' productivity or interfere with the agency's mission or operations; and
- (d) Does not violate the Standards of Ethical Conduct for Employees of the Executive Branch or any other applicable provision of law.

(2) The following examples apply:

- (a) *Office Equipment.* Employees may use agency office equipment to print, copy, or fax personal papers as long as such use does not impede another employee's use of the equipment for official business. Personal use should take only a short time and involve no more than normal wear and tear on the equipment and a negligible amount of electricity, ink, toner, and paper.
- (b) *Computers and the Internet.* Occasionally, employees may use the agency's e-mail system to send personal e-mail messages or use the Internet, for short periods, to view Web pages for personal reasons. This use is limited to situations where the government is already providing the service or equipment and personal use will not result in greater than a *de minimis* expense to the Government. For more information, see the FTC's Appropriate Use of Information Technology policy (Administrative Manual, Chapter 1, Section 310). Downloading or installing unauthorized software (including any system modification) is not allowed because it can cause computer damage, disruption of service, or create security problems. Such activity could also violate the FTC's Computer Security policy (Administrative Manual, Chapter 1, Section 550) and other related FTC guidelines.

(c) *Telephone Use (Office Desk Phone)*. FTC telephones are government equipment and, generally, are to be used to conduct official business only. However, employees may occasionally make and receive personal calls under this limited use policy, provided they do not incur additional charges to the Government. No additional charges are incurred by usage of an office desk phone for domestic calls. Employees should consult with their supervisors and the Office of the Chief Information Officer before making personal calls to international locations. Further, to comply with this policy, personal calls:

(i) must not adversely affect or interfere with the performance of official duties by the employee or the employee's organization;

(ii) must be of reasonable duration and frequency; and

(iii) could not be reasonably made at another time.

(d) *Mobile Device Use*. Although mobile devices like smartphones are provided to employees to enhance and support the FTC's mission, occasional limited personal use of these devices is also permissible, provided that such use does not incur additional charges to the Government and otherwise complies with this policy and the FTC Rules of Behavior for FTC-Issued Mobile Devices. Generally, no additional charges are incurred by domestic usage of an FTC-issued smartphone, unless the Agency's pooled minutes are exceeded. Employees should consult with their supervisors and the Office of the Chief Information Officer before making personal calls to international locations. **NOTE: before using any FTC-issued mobile device while traveling internationally, employees must review and comply with all relevant procedures in the FTC Rules of Behavior for FTC-Issued Mobile Devices** (e.g., requesting a loaner smartphone device and laptop for travel to Countries of Particular Concern).

Because mobile devices often have cellular phone, e-mail, internet capabilities, and other communications features or services, many of the guidelines for appropriate limited personal use that are applicable to FTC telephone and computer security must also be observed when using mobile devices for non-official business purposes. For example, while waiting to attend an offsite meeting, employees may use the internet services of their FTC-issued smartphones for a brief period to check news or other information, just as they would do if they were sitting in their offices working on their FTC-issued computers. Further, while employees may use a smartphone to make phone calls on a limited basis if needed, this device is not a personal cell phone and must be used under the same parameters as employees would use their office telephones.

Reasonable and prudent care and good judgment should be exercised at all times to ensure that any non-official personal use of mobile devices or the services associated with such devices involves minimal use of official time and government resources. All employees are responsible for ensuring that they are aware of, and understand their responsibilities with respect to, limited personal use and information security of all information technology, including mobile devices, under this and related policies.

B. *Prohibited Use*. The following uses of agency office equipment, including the information technology equipment described above, are always prohibited:

(1) Engaging in any illegal, inappropriate, or offensive activity (including harassment, gambling, or downloading, viewing, posting, or sending pornography or material containing

offensive references to race, sex, religion, national origin, physical or mental disability, age, or sexual orientation);

(2) Sending personal communications under an employee's official title or giving the impression that an employee's personal activities are endorsed by the government, except that an employee may sign a letter of recommendation on FTC letterhead using his or her official title for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual: (i) with whom the employee has dealt in the course of Federal employment, or (ii) whom the employee is recommending for Federal employment;

(3) Fundraising (other than participating in the Combined Federal Campaign or another officially authorized fundraising event);

(4) Engaging in partisan political activities, except that the Commissioners (not their staffs) are authorized to engage in a *de minimis* amount of political activity while on duty or in the workplace, provided they do not use appropriated funds for such activities;

(5) Using government property in a manner that will result in greater than a *de minimis* expense to the government;

(6) Sending mass mailings;

(7) Running a personal business or engaging in other "for-profit" commercial activities;

(8) Serving, with or without compensation, any entity (for-profit or non-profit) as an officer, director, trustee, employee, agent, attorney, consultant, contractor, or general partner, or engaging in compensated or uncompensated teaching, speaking, or writing, unless the activity is covered by the FTC's *pro bono* policy.

(9) Posting agency information to external news groups, bulletin boards or other public forums without authorization.

C. *Privacy*. Employees generally have no right to privacy in their use of government equipment. If employees want their personal activities to remain private, they should not use government computers, telephones, smartphones and other cell phones, or other government communications devices. Agency officials monitor such equipment to ensure system performance and appropriate use.

D. *Penalties*. Improper or unauthorized use of government office equipment may result in agency management limiting or revoking an employee's use of such equipment. Equipment misuse may also lead to disciplinary or adverse actions up to and including removal from Federal service, financial liability for the cost of the improper or unauthorized use, and criminal penalties.

(10) **Other Relevant Laws and Regulations**

While this Section summarizes generally each employee's obligation to avoid actual and potential conflicts of interest, it is not a substitute for reference to the actual laws and

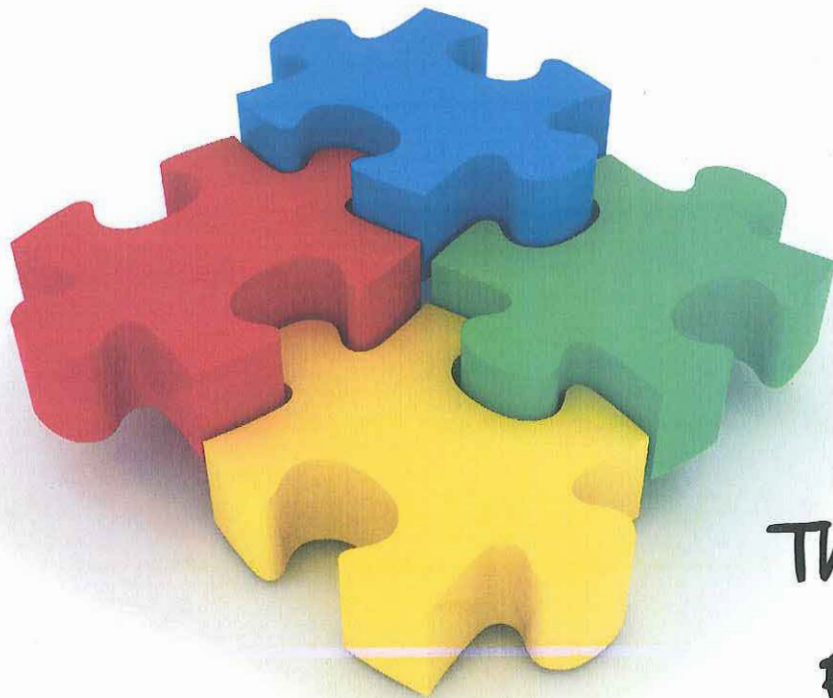
regulations governing employee conduct and may not be relied upon to assert compliance with applicable laws and regulations. Each officer and employee of the Commission, including each special Government employee, is responsible for reviewing, when necessary, and abiding by the ethics rules and laws that govern his or her conduct.

6. Ethics Advice

If an employee is unsure about the proper application of the Government-wide Standards of Conduct (or any other ethics law or regulation) to a particular situation, the employee should discuss the matter with his or her supervisor and refer to the Ethics Page on the FTC Intranet. Any matter that cannot be readily resolved should be referred to an agency ethics official. Agency ethics officials are located in the Office of the General Counsel and are available to provide ethics counseling and advice to Commission officials and employees. Ethics officials keep all discussions confidential, unless required by law, regulation, or policy or if necessary to obtain additional guidance from another ethics official, including those of the U.S. Office of Government Ethics. However, disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. 5 C.F.R. § 2635.107(b). Agency disciplinary action for violations of the Standards of Conduct or any agency supplemental regulation will not be taken against an employee who has proceeded in good faith reliance upon the advice of an agency ethics official, *provided* that the employee, in seeking such advice, has made *full disclosure* of *all* relevant circumstances. *Id.*

Dear FTC Employee,

Puzzled by ethics questions? Check
the Ethics Homepage on the Intranet.



Thanks,
Ethics

**SERVE WITH
INTEGRITY**

When in doubt,
give Ethics a shout!

Visit the Ethics
Homepage on the Intranet.

Dear FTC Employee,

Speed counts in the workplace but some pit stops are required. Have an ethics question? Stop spinning your wheels and contact the Ethics Team!



Thanks,
Ethics

**SERVE WITH
INTEGRITY**

When in doubt,
give Ethics a shout!

Visit the Ethics
Homepage on the Intranet.

Dear FTC Employee,

Some things are more precious than others - the public's trust is one example. Government service with integrity requires your special attention.



Thanks,
Ethics

**SERVE WITH
INTEGRITY**

When in doubt,
give Ethics a shout!

Visit the Ethics
Homepage on the Intranet.

Dear FTC Employee,

Cheese gets better with age -
financial data doesn't. Stay current
on your personal investments to avoid
conflicts of interest at work.



Thanks,
Ethics

**SERVE WITH
INTEGRITY**

When in doubt,
give Ethics a shout!

Visit the Ethics
Homepage on the Intranet.