



USAID
FROM THE AMERICAN PEOPLE

ADS Chapter 109

Ethics and Standards of Conduct

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ADS 109- Ethics and Standards of Conduct
POC for ADS 109: Harmony Wade, (202) 712-5098, hwade@usaid.gov

Table of Contents

<u>109.1</u>	<u>OVERVIEW</u>	<u>4</u>
<u>109.2</u>	<u>PRIMARY RESPONSIBILITIES</u>	<u>4</u>
<u>109.3</u>	<u>POLICY DIRECTIVES AND REQUIRED PROCEDURES</u>	<u>6</u>
<u>109.3.1</u>	<u>Ethics and Integrity</u>	<u>6</u>
<u>109.3.1.1</u>	<u>Applicability of the Ethics Rules to Agency Personnel</u>	<u>6</u>
<u>109.3.2</u>	<u>Education</u>	<u>9</u>
<u>109.3.2.1</u>	<u>Annual Ethics Education</u>	<u>9</u>
<u>109.3.2.2</u>	<u>Counter-Trafficking In Persons Education (C-TIP)</u>	<u>10</u>
<u>109.3.2.3</u>	<u>Additional Education</u>	<u>10</u>
<u>109.3.3</u>	<u>Ethics Exceptions</u>	<u>11</u>
<u>109.3.3.1</u>	<u>Widely-Attended Gatherings Exception Process</u>	<u>11</u>
<u>109.3.3.2</u>	<u>Foreign Gifts</u>	<u>12</u>
<u>109.3.3.3</u>	<u>Non-Federal Travel Gift Exception (31 USC § 1353)</u>	<u>14</u>
<u>109.3.3.4</u>	<u>Spouse, Domestic Partner and Family Member Approval Process and Recusal Process</u>	<u>15</u>
<u>109.3.3.5</u>	<u>18 USC § 208 Criminal Conflict of Interest</u>	<u>16</u>
<u>109.3.4</u>	<u>Ethics Violations</u>	<u>17</u>
<u>109.3.4.1</u>	<u>Reporting an Ethics Violation</u>	<u>17</u>
<u>109.3.4.2</u>	<u>Conflict of Interest Violations</u>	<u>18</u>
<u>109.3.4.3</u>	<u>Sanctions</u>	<u>18</u>
<u>109.3.5</u>	<u>Financial Reporting Requirements</u>	<u>19</u>
<u>109.3.5.1</u>	<u>OGE-278 Public Financial Disclosure Form</u>	<u>19</u>
<u>109.3.5.2</u>	<u>Confidential Financial Disclosure OGE-450</u>	<u>21</u>
<u>109.3.5.3</u>	<u>AMS, EXO and Controller Duties</u>	<u>21</u>
<u>109.3.6</u>	<u>Post-Employment</u>	<u>22</u>
<u>109.3.6.1</u>	<u>Employee Separation Clearance</u>	<u>25</u>
<u>109.3.7</u>	<u>Integrity Working Group (IWG)</u>	<u>25</u>

<u>109.4</u>	<u>MANDATORY REFERENCES</u>	<u>26</u>
<u>109.4.1</u>	<u>External Mandatory References</u>	<u>26</u>
<u>109.4.2</u>	<u>Internal Mandatory References</u>	<u>26</u>
<u>109.5</u>	<u>ADDITIONAL HELP</u>	<u>27</u>
<u>109.6</u>	<u>DEFINITIONS</u>	<u>27</u>

ADS 109 – Ethics and Standards of Conduct

109.1 OVERVIEW

Effective Date: 01/22/2014

This ADS chapter contains the ethics policy directives for USAID employees, fellows, and personal services contractors. Ethics intersects with the work performed in every aspect of development. This chapter establishes internal agency procedures for documenting or processing any determination, approval, or other action required for ethics compliance. This chapter also reiterates basic ethics rules, provides information on how to report ethics violations, and describes the potential consequences of ethical misconduct. This chapter is not a substitute for annual ethics education or a final answer to ethical dilemmas. Employees are encouraged to contact an Agency Ethics Official for specific guidance.

109.2 PRIMARY RESPONSIBILITIES

Effective Date: 01/22/2014

- a. The **Designated Agency Ethics Official (DAEO)** is the official appointed by the Administrator to administer and manage [Title I of the Ethics in Government Act](#) and the USAID Ethics Program. The DAEO serves concurrently as the Assistant General Counsel for Ethics and Administration (GC/EA), which is designated as a career Senior Executive Service position. In that capacity, the DAEO also acts as the Agency's liaison to the Office of Government Ethics (OGE), directs the ethics education programs, and collaborates with other USAID offices on administrative actions, sanctions, and remedial actions.
- b. The **Alternate Designated Agency Ethics Official (ADAEO)**, appointed by the Administrator in consultation with the DAEO, is responsible for all of the duties of the DAEO when the DAEO is unavailable to fulfill his/her duties for any reason. The ADAEO has all of the authority of the DAEO when acting in his/her absence ("alter-ego" authority).
- c. The **Office of General Counsel, Ethics and Administration (GC/EA)** is responsible for managing the USAID Ethics Program. GC/EA is ultimately responsible for annual ethics education for Agency employees, collection and review of financial disclosure forms, and providing guidance to the Agency and individual employees on all ethics matters. More information can be found at <http://auslnxapvweb01.usaid.gov/A/GC/EA/>.
- d. The **Agency Ethics Officials/Officers** are all employees assigned to GC/EA. They are delegated the authority of Deputy Ethics Officials, pursuant to [5 CFR 2638.204](#). They work on all matters identified in **109.2.c**, including providing advice on all topics relating to ethics, leading ethics education, conducting exit counseling for

employees separating from the federal service, and advising on other ethics-related matters as they arise.

e. The **Regional Legal Officers (RLOs)** are delegated the authority of Deputy Ethics Officials, pursuant to [5 CFR § 2638.204](#), at the posts/region to which they are assigned. They are generally the first point of contact for ethics matters for Mission employees, and are the primary resource for Mission management on the ethics implications of Mission programs and operations.

f. **Executive Officers (EXOs) and Administrative Management Staff (AMS) Officers** are responsible for identifying the [OGE-278](#) and [OGE-450](#) filers in their Bureaus/Independent Offices (B/IO) and Missions, collecting financial disclosure forms, and for the administrative aspects of education compliance in collaboration with GC/EA or the RLO and Controllers.

g. **Controllers and Chief Program/Budget Officers** are responsible for reviewing OGE-278s and OGE-450s to identify potential conflicts of interest that may exist. They work with the filer and the RLO to determine how conflicts of interest, or potential conflicts of interest, should be mitigated.

h. The **Bureau for Management, Office of the Chief Information Office (M/CIO)** is responsible for the confidentiality, integrity, and availability of all the Agency's information and information systems. In that capacity, M/CIO detects, reports, and responds to security incidents and violations by monitoring user's network activities and behaviors. M/CIO also supports e-discovery and forensic cases by identifying, collecting, preserving, and analyzing data in a way that preserves the integrity of the evidence collected so it can be used effectively in a legal case.

i. The **Office of Human Capital and Talent Management (HCTM)** provides advice and guidance to management officials on corrective measures for any misconduct or performance problems which may call into question the integrity of the Agency. It assesses the suitability and conduct of current or prospective employees, and coordinates with the Office of the Inspector General (OIG), GC, Office of Security (SEC), and M/CIO on any matters of concern involving violations of rules, laws and/or regulations under each offices purview.

j. The **Office of the Inspector General/Investigations (OIG/I)** investigates procurement and contract/agreement fraud as well as serious misconduct by USAID employees. Special agents are stationed in Washington, D.C. and throughout USAID Missions. OIG/I works closely with federal, state, local and foreign entities to properly adjudicate criminal, civil, and administrative violations of ethics rules and other federal laws and regulations. The Office of the Inspector General is independent of the Agency, and to the extent that there is collaboration between the DAEO and OIG/I it is with the mutual goal of addressing allegations and violations.

k. The **Office of Security/ Personnel Security Division (SEC/PSD)** is responsible for personnel security and suitability. It conducts periodic reinvestigations, special investigations, and limited inquiry investigations to evaluate the integrity, trustworthiness, and loyalty of USAID employees, prospective employees, and contractors. SEC/PSD also investigates complaints of personal misconduct of significance to the continuation of employment and retention of security clearances.

109.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 01/22/2014

The policies in this chapter are supplemental to the rules and regulations promulgated by the Office of Government Ethics (OGE). All USAID employees are required to abide by the ethics rules in [5 CFR PARTS 2634-2641](#), the [Standards of Conduct for Employees of the Executive Branch](#), and other applicable laws and regulations. Employees are encouraged to seek out an Agency Ethics Official/RLO if confronted with an ethics issue.

109.3.1 Ethics and Integrity

109.3.1.1 Applicability of the Ethics Rules to Agency Personnel

Effective Date: 01/22/2014

The ethics rules apply to all Civil Service, Foreign Service (FS), Foreign Service National (FSN), including all Direct-Hires FSNs and Personal Service Contractor FSNs, and Administratively Determined (AD) employees. The applicability of the ethics rules to other categories of personnel are as follows:

a. Personal Services Contractors (PSCs)

U.S. citizen PSCs, FSNs, and Third-Country National (TCN) PSCs are considered federal employees under the [General Provisions of AIDAR App. D § 12, cl. \(2\)\(c\)](#) and [AIDAR App. J § 12, cl. 2\(c\)](#), respectively. Also see [ADS 302, Direct Contracting](#). The provisions of the AIDAR specifically state:

The contractor shall, during his/her tour of duty under this contract, be considered an “employee” (or if his/her tour of duty is for less than 130 days, a “special Government employee”) for the purposes of, and shall be subject to, the provisions of 18 U.S.C. 202(a) and the AID General Notice entitled Employee Review of the New Standards of Conduct. The contractor acknowledges receipt of a copy of these documents by his/her acceptance of this contract.”

For purposes of this requirement, the term “New Standards of Conduct” will be interpreted as the most recent published version of [5 CFR § 2635](#). If an employee

is an intermittent PSC, the employee is still subject to the ethics rules even while in non-active status.

b. Institutional Contractor Employees

Institutional contractor employees are not USAID employees. Instead, they are employed by a non-federal entity that has contracted with USAID to perform specific tasks. However, institutional contractor employees have access to a variety of sensitive information, Personally Identifiable Information (PII), and procurement information. While they are not subject by statute to the ethics criminal statutes or regulations (including this regulation) that pertain to U.S. government employees, they should be aware of these rules with respect to their interaction with their USAID direct-hire employees and any ethics rules promulgated by the institutional contractor. See [ADS 302, Direct Contracting](#).

c. Detailee

From USAID

Employees on detail from the Agency remain subject to the ethics rules. Employees on detail to another federal agency become subject to the supplemental regulations of that agency if the detail exceeds 30 days, unless otherwise agreed between the agencies.

An employee who is detailed to a non-federal entity, such as a state or local government agency or an international organization, remains subject to the ethics rules and this USAID policy. The Designated Agency Ethics Official (DAEO) has authority to grant an exemption to coverage of the ethics rules if the detail exceeds six months.

Intergovernmental Personnel Act (IPA) - USAID employees who receive an IPA detail retain their status as federal employees, and thus remain covered by the ethics rules while on detail. IPA detailees from non-federal organizations who come to USAID are considered employees under [5 CFR § 2635.102\(h\)](#) and are covered by the ethics rules under the provisions of the IPA.

To USAID

Federal employees and private-sector employees who are detailed to USAID are subject to the federal ethics rules and USAID's ethics policy.

See [5 CFR § 2635.104](#) for more information. Also see [ADS 432, Details - Civil and Foreign Service](#), and [ADS 434, Details and Transfers to International Organizations - Civil Service \(CS\) and Foreign Service \(FS\)](#).

d. Presidential Management Fellows (PMFs)

PMFs are direct-hire employees who serve on a term-limited appointment unless and until they are converted into a competitive-service position. As direct-hires, they are subject to the ethics rules without exception.

PMF Rotations and Details-

PMFs are allowed one developmental rotation lasting four to six months and other short-term rotational assignments, which typically last one to two months (See [ADS 460.3.4.3, Rotations](#)). PMFs who were appointed before January 24, 2013 are allowed to participate in a developmental assignment outside the Federal Government. All PMFs may detail outside the Federal Government on a short-term rotational assignment with prior approval.

If a PMF wishes to rotate outside the U.S. government, the PMF must obtain prior written clearance from the PMF Coordinator, the PMF's supervisor, and contact GC/EA for a conflict of interest clearance. The PMF may not accept a rotation prior to the subject approvals. If approved, the PMF remains subject to the ethics rules and this supplemental policy for the duration of the rotation.

e. Participating Agency Service Agreement (PASA) Personnel

Individuals working under PASAs typically come from another federal agency. As Federal Government employees, they are subject to the federal ethics rules. PASA personnel are subject to this policy (See [ADS 306, Interagency Agreements](#)).

f. Fellows

AAAS Fellows – Upon acceptance into the fellowship, AAAS Fellows sign an agreement with AAAS Science & Technology Policy Fellowships which states, "AAAS Fellows must abide by both the AAAS and agency/host office ethics policies for their fellowship." The fellows are also given a copy of the *AAAS Executive Branch Ethics Policy & Guidelines*, which reiterates adherence to federal and agency ethics provisions.

Franklin Fellows – Individuals selected to be Franklin Fellows sign a Memorandum of Understanding (MOU) with the Agency which outlines the basic terms and obligations of the fellowship. A provision of the MOU states that fellows are subject to the ethics rules.

g. Presidential Appointee-Senate Confirmed (PAS) and Presidential Appointees (PA)

All PAS and PA appointees are covered by the ethics rules. Due to the sensitive nature of the issues they encounter, the DAEO, or the ADEAO in the DAEO's absence, will act as the sole ethics advisor for PAS and PA employees.

- h. Anyone hired under a mechanism not listed in this section should contact the DAEO, an Agency Ethics Official, or their Regional Legal Officer to determine applicability of the ethics rules.

109.3.2 Education

109.3.2.1 Annual Ethics Education

Effective Date: 01/22/2014

The Office of General Counsel, Ethics and Administration (GC/EA) conducts numerous live ethics education sessions each year. At the overseas posts, Regional Legal Officers (RLOs) are responsible for conducting the live ethics education course. This course addresses the Standards of Ethical Conduct for Executive Branch employees and other relevant current topics of interest. Unless specific topics have been directed by the Designated Agency Ethics Official (DAEO), individual educators have discretion to determine appropriate topics most relevant to the audience; yet must make themselves available to answer questions.

Those employees who file an annual financial disclosure form (OGE-450 or OGE-278) are required by Government-wide regulation to attend annual ethics education. Additionally, all other USAID employees, including PSCs, are required by this ADS chapter to take one hour of live ethics education every calendar year. Failure to attend scheduled ethics education by the end of the calendar year may result in administrative action, including suspension of authorities, such as Contracting Officer (CO) or Contracting Officer's Representative (COR) certification.

Employees can sign up for the USAID/Washington Ethics Education course at <http://auslnxapvweb01.usaid.gov/A/GC/EA> by clicking on the "Ethics Education" link.

There are two methods of education certification. The first is for the employee to personally sign either an individual certification or sign-in sheet at the course. The second is for the educator to certify attendance. The DAEO ultimately maintains records of those educated. The records are used for the preparation of the Annual Ethics Report submitted to the Office of Government Ethics.

Ethics education given by an Agency Ethics Official via telephone or video conference qualifies as live education. Non-live ethics education (for example, online, slideshows, and recorded video), or ethics courses offered by other U.S. Government agencies, do not fulfill the annual ethics education requirement unless approved by the DAEO.

Employees posted overseas must work through their RLO to seek approval from the DAEO.

109.3.2.2 Counter-Trafficking In Persons Education (C-TIP)

Effective Date: 01/22/2014

USAID opposes any activities that may contribute to trafficking in persons (TIP), including the procurement of commercial sex acts and use of forced labor. The Agency prohibits its employees, contractors, subcontractors, grantees, and subgrantees from engaging in behaviors that facilitate or support TIP.

Agency personnel receive awareness education in counter-trafficking in persons (C-TIP) through ethics education. GC/EA, in coordination with the Office of Disaster, Conflict, and Humanitarian Assistance, designed this education to sensitize employees to human trafficking and educate employees on the [USAID C-TIP Code of Conduct](#). The education also describes employee responsibilities if they suspect human trafficking in either a USAID program or if they suspect a partner or grantee is engaged in human trafficking. More information on C-TIP can be found at <http://www.usaid.gov/trafficking>.

Under the Code of Conduct, all USAID employees are required to report all suspected TIP violations to USAID's Office of the Inspector General (OIG). Employees can OIF via the following:

- **OIG Hotline: 1-800-230-6539 or 202-712-1023**
- **Email: ig.hotline@usaid.gov**
- **Mail: U.S. Agency for International Development
Office of Inspector General
P.O. Box 657
Washington, DC 20044-0657**

Employees overseas can also contact the Regional Inspector General at post.

109.3.2.3 Additional Education

Effective Date: 01/22/2014

The Office of General Counsel, Ethics and Administration (GC/EA) conducts other education sessions upon request tailored to an individual post or workplace. Managers may request any such education from the DAEO, and this education will satisfy annual ethics education requirements.

- a. Ethical Decision-making** is custom-tailored to USAID and designed to help managers and staff define and establish ethical values to distinguish between "right" or "wrong" decisions where no law or rule exists. This course stresses distinctions between minimal legal compliance and higher ethical conduct. The

course also generates dialogues on a variety of topics, such as enemies of integrity: careerism, misplaced loyalty, short-term thinking, and power relationships.

- b. **Hatch Act Education** teaches employees about the “dos and don’ts” for federal employees who want to engage in partisan political activities. The rules vary depending on whether an employee is a “further restricted” or “less restricted” employee as defined by the Office of Special Counsel, or a PSC. The education also explains the new rules that went into effect in January 2013. More information on the Hatch Act can be found at <http://www.osc.gov/hatchact.htm>.
- c. **Ethics and Acquisition** is a collaborative course which offers the opportunity for USAID employees, contractors, grantees, and other partners to learn together how ethics affects the acquisition or assistance process. The session features an in-depth discussion about personal and organizational conflicts of interest, Procurement Integrity Act issues, rules regarding the sharing of data, and post-employment issues. By taking the course together, employees and partners can benefit from assessing ethics from each point of view.
- d. **Ethics and Partnerships** also focuses on employees involved in the acquisition and assistance processes. It covers rules on interacting with contractors and grantees before, during, and after the acquisition or assistance process. Among other things, the education will address participation in Technical Evaluation Committee (TEC) panels and daily interaction with contractor employees.

109.3.3 Ethics Exceptions

Effective Date: 01/22/2014

The ethics rules are designed to prevent conflicts of interests, or an appearance thereof, in USAID’s operations. However, many of the ethics rules have exceptions. The following is a list of the processes used within USAID to assure the proper use of certain exceptions. Ethics exceptions do not create rights. Mission management, in consultation with an Ethics Official can further restrict the use of exceptions based on Mission circumstances. Employees should contact their Agency Ethics Official or Regional Legal Officer (RLO) if they have questions.

109.3.3.1 Widely-Attended Gatherings Exception Process

Effective Date: 01/22/2014

The Office of General Counsel, Ethics and Administration (GC/EA) and the Office of the Executive Secretariat (ES) are responsible for clearing an employee’s attendance at a Widely-Attended Gathering (WAG). Subject to the approval of an Agency Ethics Official, the WAG exception in [5 CFR § 2635.204\(g\)](#) allows employees to accept gifts of free attendance at events paid for by prohibited and outside sources. The exception may allow an employee to accept an invitation to a conference, party, retreat, or other

event. When an employee is invited to an event by a non-federal source, the Agency Ethics Official will conduct an analysis to determine conflict of interest and whether the WAG exception applies.

- a. When an individual receives an invitation and wishes to attend the event, the employee must:
 1. Contact GC/EA to request a WAG exception analysis. The request must include both a brief statement as to why the employee's attendance is in the Agency's interest and a copy of the invitation. If there is no formal invitation, the individual must provide basic information on the event, including: what, when, where, purpose, and the organizer's point of contact.
 2. Employees below the Assistant Administrator (AA) or Independent Office (IO) Director level must submit the AA or IO Director endorsement to GC/EA with the request to attend. If there are multiple invitees from one bureau or office, the AA or IO Director should prioritize the list of invitees.
 3. An Agency Ethics Official will consult with the Office of the Executive Secretariat to determine the Agency policy decision on attendance given that requests for several bureaus may need to be prioritized. Because the WAG authority is based upon the Agency's mission need to interact with others at the event, the ultimate determination is which persons are the most appropriate to represent the Agency's point of view.
 4. If GC/EA finds that the employee's attendance at the event would not result in a conflict of interest, the employee justification statement will be forwarded to ES for determination of who may attend as representatives of the Agency.
 5. After the analysis, the Agency Ethics Official will inform the employee whether attendance is cleared.
- b. The overseas WAG process is left to the discretion of the RLOs at post in their capacity as the Deputy Ethics Official. However, any process must include consideration of management interest and whether attendance is in the best interest of the Mission and Agency.

Attendance at an event without approval from GC/EA and ES may, in some situations, result in the employee being held responsible for the face value of the ticket, as well as possible disciplinary action. This is discretionary on the part of the DAEO, and the factors which will be considered include the extent to which the employee was on notice of the appropriate procedures.

109.3.3.2 Foreign Gifts
Effective Date: 01/22/2014

- a. As a rule, when a USAID employee is presented with an unsolicited gift from a foreign government, the employee should graciously accept the gift on behalf of the U.S. Government.

According to [5 USC § 7342\(a\)\(2\)](#), a “foreign government” is defined as any unit of foreign governmental authority, including any foreign national, State, local, and municipal government. With respect to USAID, persons and entities such as tribal chiefs and parastatal agencies will be analyzed on a case-by-case basis.

If offered to a USAID employee in his/her personal capacity, the employee may personally accept a gift from a foreign official equal to the value set by the General Services Administration (GSA), which GSA reviews every three years pursuant to [5 USC 7342](#). GSA most recently set the value in 2011 at \$350. If there is any question as to the value, the gift must be appraised for a value equal to or less than the maximum. The Ethics Officials are responsible for determining the appropriate means to obtain an appraisal. The employee must notify the Bureau for Management, Office of Management Services, Headquarters Management Division (M/MS/HMD) of all gifts from foreign governments in excess of the minimal value set by GSA (See [ADS 518.3.7, Personal Property Received as a Gift, Decoration, or Donation](#)). The employee must submit the gift to M/MS/HMD if in Washington, or to the Executive Officer (EXO) if overseas. In any case of other gift acceptance from a foreign official of more than nominal value, it is in the employee’s best interest to consult an Ethics Official.

- b. Gifts given to employees abroad by private individuals or organizations are subject to the \$20/\$50 rule in [5 CFR 2635.204\(a\)](#). In the event the gift surpasses the \$20 limit, the employee should attempt to dispose of the gift by returning it to the donor, by reimbursing the donor the fair market value of the item, or simply declining the gift (See [5 CFR § 2635.205](#)).

If the employee cannot decline the gift without causing embarrassment to the U.S. Government, then the employee, in consultation with an Ethics Official, may accept the gift on behalf of USAID pursuant to the Agency’s gift acceptance authority in [ADS 628.3.2, Gifts and Donations](#). After acceptance of the gift, the employee must submit the gift to the EXO at post or to M/MS/HMD in Washington. The question of embarrassment should be assessed on a case-by-case basis, taking into account the opportunity to educate the donor on U.S. Government gift rules, as well as likelihood that the donor may be considering the gift as “the art of doing business.” The recipient should also consider how the gift was funded and the increased supply chain costs that result from gifting as a business practice.

- c. Perishable and Living Gifts – Occasionally, employees have been given perishable or living gifts, such as plants, food, or even livestock. If this occurs, the employee should contact an Ethics Official for proper disposition of the gift.
- d. Regardless of the source, employees may never accept a cash gift.

109.3.3.3 Non-Federal Travel Gift Exception (31 USC § 1353)

Effective Date: 03/31/2014

- a. The Agency’s primary travel-gift acceptance authority is [31 USC § 1353](#). Under this statute, an employee may, subject to prior approval from GC/EA or the RLO at post, accept a gift of official travel and related expenses from a non-U.S. Government source. The gift is accepted on behalf of USAID and is not a gift to the employee. Pursuant to the statutory authority, the gift must be approved by GC/EA or the RLO *prior* to acceptance (See [ADS 522.3.23, Travel Funded by Non-Federal Sources](#), [ADS 633.3.10 Outside Funding Sources](#), and [ADS 628.3.2 Gifts and Donations](#)).
- b. Upon approval from GC/EA or the RLO, the non-federal source can pay for the travel and related expenses by reimbursing the Agency or by paying for the travel expenses directly. This is known as an “in-kind” payment. The employee must never personally accept cash, a check, or any other monetary payment for any reason.
- c. When an employee receives an offer to pay for travel from a non-federal source, prior to accepting the gift, the employee must:
 1. Send a request for clearance and a copy of the invitation to GC/EA or RLO for a conflict of interest analysis. The request for clearance should describe exactly what the non-federal entity is offering to pay (i.e., flight, meals, lodging, incidentals, etc.)
 2. Upon approval, the employee must include the following paragraph in remarks of the travel authorization:

Transportation and lodging are being provided in-kind by [INSERT NAME OF SPONSORING ENTITY] and are accepted by USAID pursuant to 31 USC § 1353. Only in-kind payments to the traveler are authorized; the traveler will not accept any cash payments directly. The traveler affirms that his/her duties do not affect the interests of [INSERT NAME OF SPONSORING ENTITY]. GC/EA has conducted a conflict of interest analysis under the applicable rules, and found that a

conflict of interest does not exist. Upon return, the traveler will submit a SF-326 form to GC/EA or the Regional Legal Officer.

3. Attach a copy of the offer of payment from the non-federal source and the written GC/RLO clearance to the travel authorization.
 4. Upon completion of travel, the employee must submit form SF-326 to GC/EA or RLO, as appropriate. The RLO must ensure that SF-326 forms for approved non-federal travel are submitted to GC/EA.
- d. **Restrictions on [31 USC § 1353](#)** – The Agency is required to provide regular reports to the Office of Government Ethics (OGE) concerning the use of this authority. Acceptance of a gift of travel expenses without approval from GC/EA may result in disciplinary action for the employee. In addition, the employee may be required to deposit an amount equal to the value of the gift into the general fund of the Treasury. The employee will not be entitled to reimbursement from the Agency. The employee will also be subject to any other penalties and disciplinary action under the law.

The spouse or relative of an employee is not permitted to travel on partner-paid travel unless the presence of the spouse is specifically required for the travel and doing so will further the mission of the Agency.

The employee is strictly prohibited from soliciting travel expenses from a non-federal source.

- e. **PASA Personnel Travel under [31 USC § 1353](#)** – Prior to accepting a gift of travel or related expenses from a non-federal source, PASA personnel must first contact GC/EA or the RLO for a conflict of interest analysis. Because [31 USC § 1353](#) allows an agency to accept a gift on behalf of the employing agency, individuals working under a PASA must contact their home agency for approval of gift acceptance and processing of the travel authorization. Upon returning from the trip, the person must file an [SF-326](#) with his or her home agency.

109.3.3.4 Spouse, Domestic Partner and Family Member Approval Process and Recusal Process

Effective Date: 01/22/2014

When members of the same family work for USAID, it can raise concerns regarding nepotism and conflict of interest. In order to avoid any conflicts or questions of impropriety, employees should obtain GC/EA or RLO clearance before a spouse or family member is hired within the employee's same Bureau/Independent Office (B/IO) or Mission.

- a. **Tandem Couple** - When tandem couples are assigned to the same post, the employees must contact their Ethics Official and structure a tandem couple screening assignment to ensure one employee does not have supervisory or other decision-making authority over the other spouse. When this concerns a Senior Management Group (SMG) assignment, it is in the couple's best interest to obtain ethics counseling prior to the assignment. When one spouse is assigned as the Mission Director or Deputy Mission Director, the screening assignment must be assessed by the RLO for conflicts and approved by the Designated Agency Ethics Official (DAEO).
- b. **Spousal Employment** - If a spouse, including a domestic partner, applies for a job with the Mission, regardless of the hiring mechanism (EFM, PSC, Fellow, etc.), the spousal employee is prohibited from being on the selecting committee. The employee must immediately file a letter recusing him- or herself from any decision-making authority regarding the spouse, including but not limited to, supervising, approving time and attendance, and issuing assignments. When one spouse is assigned as the Mission Director or Deputy Mission Director, the screening assignment must be approved by the DAEO.
- c. **Family Members** – In the event a family member of an employee applies for a position in the same B/IO of an employee, the employee must immediately contact an Ethics Official and file a letter of recusal, recusing the employee from any decision-making authority, including but not limited to, supervising, approving time and attendance, and issuing assignments. This applies regardless of the hiring mechanism (i.e. EFM, PSC, Fellow) whereby the family member seeks to be hired. It also applies to unpaid internships for children or other close family members.

109.3.3.5 18 USC § 208 Criminal Conflict of Interest

Effective Date: 01/22/2014

The statute which addresses conflicts of interest, [18 USC § 208](#), is a criminal statute. The DAEO does not have the authority to waive any conflict under this section, and therefore, must coordinate any waiver with the Department of Justice. With the exception of the following occurrences under this section, a waiver request will not be entertained except for the most extraordinary situations.

Institutional contractors and fellows (such as Global Health Fellows and AAAS Fellows) are not covered by the federal statute. Violation of [18 USC § 208](#) may result in administrative action, including the termination of their appointment.

a. “Connie Lee” Waivers

Federal law under [18 USC § 208](#) prohibits employees from participating in any particular matter which involves an organization for which the employee serves on

the board of directors. This rule applies regardless of whether the employee's presence on the board is in his/her official or personal capacity. An employee may be excepted from this rule by obtaining a written waiver known as a "Connie Lee" waiver. In order to obtain a Connie Lee waiver, the employee must:

- Request a waiver from an Ethics Official.
- In consultation with the employee's appropriate functional office, the Ethics Official must draft a proposed waiver letter.
- The Ethics Official, in collaboration with the DAEO, will finalize the waiver letter for submission to OGE.
- After OGE approves the waiver letter, the Ethics Official must submit it to the DAEO for signature.

b. Exemptions from 18 USC § 208

Non-Profit Organizations - An employee is exempt from the restrictions in [18 USC § 208\(a\)](#) if the employee is serving, or is seeking to serve as an officer, director, or trustee of a [26 USC § 501\(c\)](#) non-profit organization in the employee's official capacity (See [5 CFR § 2640.203\(m\)](#)). Because this exception requires legal analysis of the organization, it is in the employee's best interest to contact an Ethics Official and receive written approval.

Statutory Exemptions for Board Members - Employees may also be exempt from [18 USC § 208](#) if their presence on a board or administrative body in their official capacity is statutorily required. Because this exception requires a legal analysis of the official capacity of the employee, it is in the employee's best interest to contact an Ethics Official and receive written approval.

109.3.4 Ethics Violations

109.3.4.1 Reporting an Ethics Violation

Effective Date: 01/22/2014

The Designated Agency Ethics Official (DAEO) and other Ethics Officials are not law enforcement officials. The function of the ethics program is to identify potential issues and to mitigate or remedy matters. In certain situations in which there is an allegation that is potentially criminal in nature, it is incumbent upon the DAEO or other Ethics Officials to notify the Office of the Inspector General (OIG). Employees may report suspected ethics violations to an Ethics Official. Depending on the seriousness of the matter, the Ethics Official may simply issue a reminder of the rules to the employee in

question. More serious violations are reported to the DAEO for further action. If the activity involves human trafficking, then any suspicions must be reported to OIG.

Although employees may report allegations directly to an Ethics Official as an “appropriate official” pursuant to [5 CFR § 2635.101](#), employees may instead choose to make a report directly to the OIG. Any reports to the DAEO or an Ethics Official will be handled discreetly, but there is no mechanism to guarantee formal confidentiality. If the employee desires anonymity or confidentiality, the employee should make a report directly to the OIG’s hotline:

- OIG Hotline: **1-800-230-6539** or **202-712-1023**
- Email: ig.hotline@usaid.gov

109.3.4.2 Conflict of Interest Violations

Effective Date: 01/22/2014

The statute which addresses conflicts of interest, [18 USC § 208](#), is a criminal statute. Ethics Officials are required to forward any credible suspected allegations of [18 USC § 208](#) violations to the OIG. Any such reporting by Ethics Officials must be in consultation with the DAEO.

109.3.4.3 Sanctions

Effective Date: 01/22/2014

Violation of the ethics rules and statutes can result in administrative and criminal penalties. All disciplinary actions which involve a component of ethical misconduct must be cleared by the DAEO prior to the proposal. Violation of the ethics rules, or an appearance of a violation, may result in the following, in lieu of disciplinary or other administrative action:

- a. **Letter of Caution or Letter of Advice (LOC/LOA)** – This is an advisory letter from the DAEO that is given to an employee who has engaged in activity that does not rise to the level of requiring disciplinary action but that otherwise is inconsistent with the ethical conduct expected of Government employees. The purpose of this type of letter is to remind the employee of the ethical boundaries and explain how their actions can potentially lead to a more serious ethics violation and more serious consequences. The DAEO will only issue such a letter upon prior consultation with an employee’s supervisor. The letter is not disciplinary and does not go into an employee’s personnel file. Employees who receive a LOC or LOA are encouraged to contact the DAEO if they have any questions about the circumstances which prompted the letter, but no response is required. There is no “appeal” from an LOC or LOA. Ethics Officials and other Agency personnel do not have the authority to issue an LOC or LOA.

- b. **Remedial Education** – An employee may be required to take one-on-one remedial education with an Ethics Official based on an appearance of conduct that violates the ethics rules, or as a corrective action in a case in which a violation has been found. This education is not intended to substitute for any other appropriate action, and is not disciplinary in nature. In arranging such education, an Ethics Official is required to consult with the DAEO and the employee's supervisor.
- c. **Disciplinary Action** – An employee who violates the ethics rules may be subject to disciplinary action under [ADS 485, Disciplinary Action - Foreign Service](#) and [ADS 487, Disciplinary and Adverse Actions Based upon Misconduct - Civil Service](#). Disciplinary action can range from a Letter of Reprimand to termination of employment.
- d. **Criminal Penalties** – The criminal penalties associated with violation of the conflict of interest and post-employment statutes can be found in [18 USC § 216](#). Violators of these statutes risk prison and a fine. The application of criminal penalties is within the sole purview of the Department of Justice or the U.S. Attorney.
- e. **Civil Penalties** – In addition to the criminal penalties, the employee may also be subject to civil penalties, which includes a fine (See [18 USC § 216](#)). The application of civil penalties is within the sole purview of the Department of Justice or the U.S. Attorney.

109.3.5 Financial Reporting Requirements

Effective Date: 01/22/2014

In order identify and avoid potential sources of conflicts of interest between their official duties and their private financial interests and affiliations, OGE requires certain employees to disclose their private financial interests. The level and type of disclosure required depends on the grade and duties of the employee.

109.3.5.1 OGE-278 Public Financial Disclosure Form

Effective Date: 03/31/2014

Senior officials, Foreign Service equivalents, Special Government Employees (SGEs), PSCs, and ADs, whose positions are classified above GS-15 or FS-1, or who served for more than 60 days in positions which were classified at that level in the preceding calendar year, are required to fill out and submit the [OGE-278, Public Financial Disclosure Form](#) to GC/EA. The OGE-278 is a public document, due on May 15th of each year, which discloses the employee's financial holdings and outside interests during the previous year. For example, OGE-278 filers must submit an OGE-278 disclosing 2013 assets by May 15, 2014. Employees may also be required to file periodic financial disclosures during the course of the year. More information and

reference materials on how to fill out the OGE-278 can be found at <http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Helpful-Resources/Helpful-Resources-for-Public-Financial-Disclosure/>.

- a. Annual Public Financial Disclosure Report (OGE-278) –
 - Each year, employees who are filers, must report their financial assets, debts, and outside compensation. The employee must also report the financial assets of their spouse, minor children, and adult children (if still living at home) because their interests are imputed to the employee. However, the assets of family members may require less detail. Employees should talk to an Ethics Official if they have questions regarding completing the form. The OGE-278 can be found at <http://www.usaid.gov/forms>.
 - New Entrant and Termination Filers: Employees who enter into a position covered by the OGE-278 filing requirement are known as "New Entrant" filers. New Entrant filers must file an "new entrant" OGE-278 within 30 days of occupying the position. When an employee vacates a covered position, either by separating from federal service or transferring to a position that does not require filing an OGE-278, that employee becomes a Termination filer. A Termination filer must file an OGE-278 within 30 days of vacating the position. Employees should talk to an Ethics Official with any questions (see [5 CFR 2634.201](#)).
- b. Periodic Transaction Disclosure Report (OGE-278-T) – Filers must file an [OGE-278-T](#) for periodic security transactions during the year. Employees must report a transaction no later than 45 days after it occurred or 30 days after the employee received notice of the transaction, whichever date is earlier. For example, if an employee receives notice from his or her broker that a particular stock was sold 30 days earlier, the employee will have 15 days to report the transaction. In all cases, disclosure of the transaction must be made within 45 days of its occurrence. The employee is responsible for keeping track of transactions to make sure they are timely reported. The OGE-278-T can be found at <http://www.usaid.gov/forms>.
- c. Transactions which need to be reported on the OGE-278-T include the purchase, sale, or exchange of:
 - Stocks,
 - Bonds,
 - Commodity futures, and

- Other forms of securities exceeding \$1,000.

The OGE-278-T should be submitted, as a PDF scanned with the employee's signature, and emailed to 278-T@usaid.gov for review by GC/EA.

Employees do not need to report all asset transactions. Transactions involving the following are excluded from the reporting requirement:

- Certificates of deposit, cash (checking or savings) accounts, and money-market accounts;
- Excepted Investment Funds (EIFs), which include most mutual funds [If you have a question about whether your fund qualifies as an EIF, please contact GC/EA];
- Transactions involving real property;
- U.S. Treasury securities; and
- Life insurance and annuities.

109.3.5.2 Confidential Financial Disclosure OGE-450

Effective Date: 01/22/2014

Certain non-clerical employees whose positions are classified at or below GS-15 or FS-1 (including FS equivalents, SGEs, PSCs, and FSNs), and whose duties include the exercise of significant discretion in certain sensitive areas, such as contracting and procurement, are required to fill out [OGE-450, Confidential Financial Disclosure Form](#). The OGE-450 is due on February 15th of each year and covers assets and outside interest from the preceding year.

Unlike the OGE-278, the OGE-450 is not available to the public under any circumstances. OGE-450 filers are also not required to report security transactions made throughout the year.

The employee is obligated to report the financial assets of his or her spouse, minor children, and adult children (if still living at home) because their interests are imputed to the employee. However, the assets of family members may require less detail. Employees should talk to an Ethics Official if they have questions regarding completing the form.

109.3.5.3 AMS, EXO and Controller Duties

Effective Date: 01/22/2014

B/IO Administrative Management Staff (AMS) and Mission EXOs are responsible for identifying those employees required to file the [OGE-278, Public Financial Disclosure Form](#) and the [OGE-450, Confidential Financial Disclosure Form](#). Mission EXOs and Bureau AMS officers are responsible for providing employees with access to the form (OGE-450), via or hardcopy or a link. A tool to aid in helping determine whether an employee is an OGE-450 filer can be found at http://www.oge.gov/uploadedFiles/Education/Education_Resources_for_Ethics_Officials/Resources/450_FilersJobAid.pdf.

In Washington, AMS officers must collect completed forms, ensure that they receive an intermediate review for conflict of interest by their Bureau controller or chief program/budget officer, and forward completed forms to GC/EA for certification.

Overseas, EXOs must collect and forward completed forms to the appropriate RLO, after an intermediate review by Mission controllers for certification. The RLOs must then certify OGE-450s and submit them to GC/EA. The OGE-278s will be certified by GC/EA in Washington.

The responsible AMS, EXO, or Controller must complete the “Date Received by Agency” box, located in the top left corner of the first page of the OGE-450. Although a similar box does not exist on the OGE-278 form, the official initially receiving the form from the filer must record the “received by” date, with initials, on the upper right hand corner of the first page of the form.

All financial disclosure reports are considered to be “Sensitive But Unclassified” (SBU)/ PII for purposes of processing within the Agency. Anyone handling the forms should take extra care with and ensure that the highly-sensitive personal financial information is not disclosed under any circumstances other than those required for review, certification, and filing.

109.3.6 Post-Employment

Effective Date: 01/22/2014

Employees separating from federal employment are encouraged to get post-employment counseling in order to avoid violating any ethics rules. Even after separation, a former employee may still be subject to several ethics rules, some of which have criminal penalties if violated. Former employees are encouraged to call the Office of General Counsel, Ethics and Administration (GC/EA) with any questions about any ethics rules that may apply as they embark on a post-government career. Additional information and guidance can be found at <http://ausInxapvweb01.usaid.gov/A/GC/EA/>.

a. Procurement Integrity

The Procurement Integrity Act (PIA) provisions, found in [FAR § 3.104-3](#) and [48 CFR § 3.104](#) prohibit an employee from accepting compensation from a government contractor within one year of serving as a contracting officer, source selection authority, member of the source selection board, or chief of the financial or technical evaluation team where that contractor was selected for an award over \$10,000,000, including all options.

Under [FAR § 3.104-3\(d\)](#), an employee may be allowed to accept compensation and employment from a different affiliate or division of a contractor if it does not produce the same or similar products or services as the contractor's unit awarded the government contract.

However, the determination of whether a unit is a division that "produces products or services that are the same or similar" as the unit which is implementing the government contract is very fact-specific. The employee is responsible for demonstrating to the DAEO that the division produces services or products so different from the implementing contracting unit that a conflict of interest does not exist.

If a current or former employee is unsure about whether the PIA provisions apply to him or her, the employee may make a written request for an advisory opinion to the DAEO. The request must include a description of:

1. Procurements or decisions involving the particular contractor in which the employee was involved with, including contract or solicitation numbers, dates of solicitation or award, a brief description of the procurement, and contract amount;
2. The employee's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the employee's duties, responsibilities, or actions; and
3. A description of the products or services produced by the division or affiliate of the contractor from whom the employee would accept compensation.

b. OGE-278 Filers Negotiating Employment

Within three business days of the commencement of negotiations, OGE-278 filers must report to the DAEO any negotiations or agreement with any non-governmental entity for post-government employment or compensation to the DAEO.

The employee must submit a signed statement to the DAEO that identifies the:

1. Name(s) of the entity or entities, and
2. Date negotiations (or an agreement) commenced.

A sample 278 Filer Employment Negotiation Notice can also be found on the intranet at: <http://auslnxapvweb01.usaid.gov/A/GC/EA/>.

A negotiation begins when an employee enters into a discussion or communication with another person, or such person's agent or intermediary, which is mutually conducted with a view toward reaching an agreement regarding possible employment or compensation with that person.

Only negotiations for future employment trigger the notification requirements. However, employees engaged in or seeking outside employment concurrent with their federal employment also have an obligation to recuse themselves from those employers or potential employers.

c. Ethics Clearance Letters

Certain employers or potential employers may request that an employee or former employee obtain an "ethics clearance letter" at some point during the recruitment process. This is a letter supplied by the DAEO and describes the post-employment ethics rules as they relate to the facts supplied by the employee and/or employer. The letters are requested directly by the employee rather than directly by the employer. The DAEO is not responsible for ascertaining any facts other than those presented, and the letter will specifically include the language, "based on the following facts as presented."

Requests should include as much of the following, as is available:

- USAID job title and duties,
- Grade and step,
- Name and contact of potential employer,
- Title and duties of position sought with the potential employer,
- Description of any matters the employee has worked on with the potential employer while at USAID, and
- Description of any matters their subordinates have worked on with the potential employer while at USAID.

By statute, the DAEO has 30 days to prepare such a letter; however, as a matter of policy based on the personal needs of employees and former employees, GC/EA will give the preparation of these letters the highest priority.

109.3.6.1 Employee Separation Clearance

Effective Date: 03/16/2015

As part of the Agency's official clearance process for separating employees, the separating employee's AMS Officer must provide the separating employee with GC/EA's [Employment Search and Post-Employment Guidance](#) at least two weeks in advance of the employee's departure.

Employees separating directly from post must contact their RLO. Ethics Officials and RLOs offer separating employees the opportunity for post-employment counseling. Employees who are required to file an OGE-278 will be notified of the requirement to submit a Termination OGE-278.

109.3.7 Integrity Working Group (IWG)

Effective Date: 01/22/2014

Agency integrity issues often trigger the involvement of more than one office. The purpose of the IWG is to allow these offices to come together collectively to streamline and help resolve integrity and ethics issues as quickly and consistently as possible, thereby establishing the best work environment possible for USAID staff and protecting the public trust. The IWG has no authorities other than the authorities already possessed by its members. Any exercise of those authorities must reference the individual office/member, and must not reference the IWG.

a. The permanent members of the IWG are:

- DAEO and Alternate DAEO;
- Office of Security/Personnel Security Division (SEC/PSD);
- Bureau for Management, Office of the Chief Information Office (M/CIO);
- Office of Human Capital and Talent Management/Employee Labor Relations (HCTM/ELR); and
- Office of the Inspector General/Investigations (OIG/I).

b. Matters discussed in the IWG are typically sensitive in nature, and treated as SBU/PII by members.

- c. Other office heads and subject matter experts may be invited to attend or speak at the IWG meetings.

109.4 MANDATORY REFERENCES

109.4.1 External Mandatory References

Effective Date: 01/22/2014

- a. [5 CFR § 734 - Political Activities for Federal Employees](#)
- b. [5 CFR § 2635 - Standards of Ethical Conduct for Employees of the Executive Branch](#)
- c. [5 CFR § 2638 – Agency Ethics Program Responsibilities](#)
- d. [5 CFR § 2641 – Post-Employment Conflict of Interest Restrictions](#)
- e. [18 USC § 208 – Criminal Conflict of Interest](#)
- f. [18 U.S.C. § 208\(b\)\(2\) Exemption for Official Participation in Nonprofit Organizations](#)
- g. [31 USC § 1353](#)
- h. [The Hatch Act](#)
- i. [Procurement Integrity Act](#)

109.4.2 Internal Mandatory References

Effective Date: 01/22/2014

- a. [ADS 102, Agency Organization](#)
- b. [ADS 103, Delegations of Authority](#)
- c. [ADS 302, Direct Contracting](#)
- d. [ADS 306, Interagency Agreements](#)
- e. [ADS 331, USAID Worldwide Purchase Card Program](#)
- f. [ADS 432, Details - Civil and Foreign Service](#)
- g. [ADS 434, Details and Transfers to International Organizations - Civil Service \(CS\) and Foreign Service \(FS\)](#)

- h. [ADS 460, Presidential Management Fellows Program](#)
- i. [ADS 485, Disciplinary Action - Foreign Service](#)
- j. [ADS 487, Disciplinary and Adverse Actions Based upon Misconduct - Civil Service](#)
- k. [ADS 518, Personal Property Management \(Domestic\)](#)
- l. [ADS 522, Performance of Temporary Duty Travel in the U.S. and Abroad](#)
- m. [ADS 628, Gifts and Donations and Dollar Trust Fund Management](#)
- n. [AIDAR](#)

109.5 ADDITIONAL HELP
Effective Date: 01/22/2014

There are no additional help documents for this chapter.

109.6 DEFINITIONS
Effective Date: 01/22/2014

This section defines terms including acronyms used in this document. For additional definitions, please see the [ADS Glossary](#).

Alternate Designated Agency Ethics Official (ADAEO)

The individual appointed by the Administrator to serve in an acting capacity in the absence of the DAEO. (**Chapter 109**)

Designated Agency Ethics Official (DAEO)

The individual designated by the Administrator to coordinate and manage USAID's ethics program in accordance with the provisions of [5 CFR § 2638.203](#). (**Chapter 109**)

disciplinary action

Actions including, but not limited to, reprimand, suspension, demotion, and removal. (**Chapter 109**)

donations

Donations are monies and materials given by private persons and organizations to USAID without receiving anything in exchange. This term is used interchangeably with gifts for the purposes of ADS Chapter 628. (**Chapters 109 and [628](#)**)

ethics rules

Refers collectively to the provisions of [5 U.S.C. Chapter 73](#) (employment limitations, political activities, foreign gifts and decorations, gifts from prohibited sources, gifts between employees, certain kinds of misconduct, and drug and alcohol abuse); the [Ethics in Government Act](#) (financial disclosure and outside earned income limitations), section 27 of the Office of Federal Procurement Policy Act (procurement integrity), 18 U.S.C. §§ [203](#), [205](#), [207](#), [208](#), and [209](#) (the criminal conflict of interest statutes);[6] 18 U.S.C. §§ [602](#), [603](#), [606](#), [607](#), [643](#), and [654](#) (political contributions, accounting for public money, and conversion of property); 18 U.S.C. §§ [1905](#) and [1913](#) (disclosure of confidential information and lobbying with appropriated moneys); and 31 U.S.C. §§ [1343](#), [1344](#), and [1349\(b\)](#) (passenger motor vehicle and aircraft purchase and use). (**Chapter 109**)

gift

Includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of education and travel expenses. (**Chapter 109**)

non-profit organization

Any organization, association, or entity which falls under the provisions of [26 USC § 501\(c\)](#). (**Chapter 109**)

Office of Government Ethics (OGE)

The agency that provides overall direction, oversight, and accountability of Executive Branch policies designed to prevent and resolve conflicts of interest. OGE is also charged with promoting high ethical standards for Executive Branch employees. (**Chapter 109**)

prohibited source

A person (or organization made up of such persons) who is seeking official action by, is doing business with, or seeking to do business with, or has interests that may be substantially affected by performance or nonperformance of the employee's official duties. (**Chapter 109**)

tandem couple

A married couple, including domestic partners, working as PSCs or direct hires in the same Mission. (**Chapter 109**)

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