



732 North Capitol Street NW
Washington, DC 20401-0050

June 21, 2018

The Honorable Roy Blunt
Chairman
Joint Committee on Printing
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

The Honorable Rodney Davis
Vice-Chairman
Joint Committee on Printing
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

Via Electronic Transmission

Reference: GPO OIG Interim Report of Investigation; Misconduct by Senior GPO Managers, June 21, 2018 (18-0011-I)

Dear Chairman Blunt and Vice-Chairman Davis,

I am writing this letter to inform the Committee of a serious situation that has developed at the Government Publishing Office (GPO). As acting GPO Inspector General, I believe it is my obligation to report directly to the Committee in the absence of a Director or Deputy Director for this Agency.¹ In response to numerous complaints received by the Office of Inspector General (OIG), we are conducting an investigation into the alleged subversion of the normal personnel accession process by certain GPO officials.

We have concluded that Acting Deputy Director Andrew M. Sherman and Chief Administrative Officer Herbert H. Jackson, Jr., have over the past four years orchestrated a scheme to bypass

¹ 44 USC § 3901
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the competitive hiring process and engaged in cronyism,² thereby betraying the public trust. Their mismanagement, misuse of position, and disregard for the rules as they apply to hiring and contracting for services has resulted in a diminution of respect for GPO management by GPO staff. The improper hiring of two otherwise ineligible employees was conducted openly and without regard for those employees who try to work within the rules, resulting in an erosion of morale and perpetuating the appearance that GPO senior leadership is subject to different standards of conduct. Sherman and Jackson violated Federal statutes, regulations, and GPO directives, and it was not until Sherman recently became aware of the OIG investigation that he took steps to correct the two issues.

The OIG did not perform a cost analysis to determine if the dollar amounts paid for the resulting services were reasonable; instead, we take the position that since Federal employment and acquisition statutes, put in place to safeguard taxpayer dollars, were not followed, payments made to both employees were *prima facie* unreasonable and, therefore, wasteful. Together, Sherman and Jackson cost the taxpayers \$437,387.63 for the services of two unauthorized GPO employees.

Because this report implicates the two most senior GPO managers, I am reporting this issue directly to the Committee in the belief that the Committee has the authority to address these problems and remedy the negative impact they have had on the GPO workforce.³

Summary of Interim Investigative Findings

The government is normally required to obtain its employees by direct hire under competitive appointment or through other procedures authorized by the civil service laws. Obtaining personnel services by contract or other non-competitive method circumvents those laws. Unless Congress has specifically authorized an alternative to competitive hiring, it is not allowed. Our investigation concluded that the hiring of two employees violated Federal statutes, regulations, and GPO directives and was motivated by cronyism.

The OIG has conducted numerous interviews and reviewed documents, contract files, and GPO databases during this investigation. We have consulted with outside investigative agencies with expertise in certain fields of interest and discussed several matters with the Office of the United States Attorney for Washington, DC. The investigation is ongoing, and we are awaiting the receipt of information from both GPO and other third parties related to the investigation.

² <https://en.oxforddictionaries.com/definition/cronyism>: *The appointment of friends and associates to positions of authority, without proper regard to their qualifications.*

³ 44 USC § 103

Herbert H. Jackson, III

On May 19, 2014, Herbert H. Jackson, III, was hired to work at GPO as a General Administrative Trainee under the Internship Program, one of the Pathways Programs,⁴ in violation of statute and GPO directive. The Pathways Program is designed to bring well-educated and highly motivated students into a government organization on a trial basis prior to permanent placement. Agencies like GPO are allowed to directly appoint interested candidates to any position for which the candidate is qualified. Appointments under the Pathways Program must be made in accordance with certain provisions. Among these is the prohibition on appointing a Pathways participant to fill a vacancy where a relative is in a position to influence or control the participant's appointment, employment, promotion or advancement within the agency.⁵

Jackson, III, was assigned to GPO Security Services, Physical Security Branch, under the supervision of the GPO Chief Security Officer (CSO). Jackson's father, Herbert H. Jackson, Jr., Chief Administrative Officer, supervised the CSO and by default, the Physical Security Branch. This arrangement put Jackson, III, indirectly under the supervision of his father, Jackson, Jr. The GPO Employment and Supervision of Relatives Directive prohibits the indirect supervision of any related individual within one's subordinate supervisory chain of command, regardless of the number of intervening levels of supervision.⁶ Several GPO managers brought this to the attention of the former Director, Davita Vance-Cooks, who allowed the situation to persist without taking action. The OIG could find no indication that Director Vance-Cooks issued a waiver to the standing directive.

It was not until May 17, 2018, when Sherman became aware of the OIG's investigation, that he took steps to correct the situation. Rather than move Jackson, III, from under his father's chain-of-command, Sherman moved the entire Security Services unit under the supervision of the Office of the Director. As a result, Jackson, III, was allowed to maintain his job under the Pathways Program despite being in violation of the regulation and GPO directive.

In total, Jackson, III, was employed for over 4 years, at a cost of \$109,365.77. Sherman stated that he did not institute corrective action with regard to Jackson, Jr., because he did not believe he had the authority to do so. When asked why his son didn't apply for a position with GPO through the competitive hiring process, Jackson, Jr., stated that he did not believe his son would qualify for the position due to his son's lack of veterans' preference for hiring.

⁴ 5 CFR § 213.3402(a) Internship Program; Positions in the Internship Program

⁵ 5 CFR § 362.105(f) Employment of relatives

⁶ Attachment (1)

Kimberly M. Travis

In another case of cronyism, in violation of statute and directive Sherman facilitated the hiring of an unqualified employee that lasted four years and cost taxpayers \$328,021.86. As a favor to the late Chester “Chuck” Turner, a powerful, well-connected staff member of the House Appropriations Committee and a key player in the formulation of GPO’s annual appropriation,⁷ Sherman found a job for Turner’s family friend, Kimberly Travis. When interviewed by the OIG, Sherman stated that Turner simply provided him with Travis’ resume and did not ask him to find her a job. However, in an email from Turner to Sherman, Turner asked Sherman for Travis’ “status,” indicating that Turner had an expectation that Sherman would attempt to find Travis a job. The day after the Turner email, Sherman was contacted by GPO Human Capital regarding “Schedule C”⁸ appointments, and within two weeks a meeting was called to discuss employment options. Within two months, Travis received a Schedule C appointment to GPO.

Beginning in January 2014, Sherman placed Travis in the recently vacated position of Employee Communications Specialist within Sherman’s Office of the Chief of Staff. Travis’ initial appointment was done under Schedule C for 120 days, extended for an additional 120 days, and ended in September 2014. At that time, Travis was placed on a personal services contract until May 2015. She was then transitioned to a third-party contractor, which had been providing services to GPO for many years, facilitating Travis to continue her employment with GPO, uninterrupted. In September 2016, as part of an effort to eliminate personal services contracts, GPO Acquisition Services attempted to cancel Travis’ contract, but Sherman insisted that she remain employed. As a result, Travis was awarded an additional personal services contract to take her through fiscal year 2017. At the end of that contract, GPO’s Chief Acquisition Officer, relying on an opinion from GPO General Counsel, advised against continuing Travis under a personal services contract for an additional year. To circumvent the advice, Sherman with the assistance of Jackson, Jr., facilitated a fourth personal services contract with Travis through a new third party contractor for fiscal year 2018. In total, Travis was awarded two direct contracts and two indirect contracts resulting in four personal services contracts over four years. All four contracts were awarded in violation of statute and regulation.

For the vast majority of her tenure at GPO, Travis worked directly for Sherman, taking daily tasking and direction from him. Sherman monitored Travis’ time and approved her invoices for payment. Travis’ tasks remained the same whether as a sole proprietor or an employee of a third party contractor. In 2016, her responsibilities were expanded to include operation of a

⁷ Attachment (2)

⁸ 5 CFR § 6.2 Schedules of excepted positions.

visual training aid for Security Services. The nature of this reporting relationship characterizes all four contracts as personal services type under the regulations.⁹

The law allows GPO to award personal services contracts;¹⁰ however, these contracts are reserved only for experts or consultants.¹¹ When interviewed by the OIG, both Sherman and Jackson, Jr., conceded that Travis was not an expert or consultant as defined in the regulation.¹² In its required annual reports to the Office of Personnel Management, GPO never included Travis' contracts in the list of experts and consultants retained by GPO under personal services contracts.

The regulation specifically states that it is inappropriate to use such personal services contracts to do work performed by the agency's regular employees, to fill in during staff shortages, or in anticipation of giving a career appointment to the contractor at some time in the future.¹³ Sherman stated that he intended to have Travis apply for a position with GPO through the competitive process, but both he and Jackson, Jr., believed Travis would not be able to qualify for the selection list; therefore, the personal services contracts were necessary in order to keep her employed at GPO.

GPO requires all contracts for services be awarded through the normal competitive process¹⁴ unless a situation necessitating other than full and open competition is cited.¹⁵ Of the four contracts, one contract file contains a sole source justification, one contract cites sole source authority with no accompanying justification memo, and the two remaining files contain no indication whether the competitive bid or sole source process was utilized in making the award.

During the investigation, several witnesses mentioned that Travis' conduct became a source of personnel problems; some coworkers in her work section were upset with her fraternizing with other GPO employees from other work sections, not related to her work. In addition, her personal conduct and work skills were questioned by those who worked with her. Travis became involved in at least two internal investigations; one resulted in the resignation of a GPO police officer, and the other resulted in Travis being reassigned to a work section away from her former colleagues. Sherman's efforts to keep Travis employed at GPO contributed to an overall deterioration of employee morale.

⁹ Attachment (3)

¹⁰ 44 USC § 305

¹¹ 5 CFR § 304.103 (a) *Basic authority.*

¹² 5 CFR § 304.102 Definitions

¹³ 5 CFR § 304.103 (b) *Inappropriate use.*

¹⁴ Attachment (4)

¹⁵ Attachment (5)

On June 5, 2018, after being made aware that the OIG was investigating Travis, Sherman called an impromptu meeting and directed that Travis be immediately removed from GPO and her contract terminated for the convenience of the government. At that meeting, Sherman stated that he should have removed Travis earlier and that he took full responsibility for not doing so.

GPO Standards of Conduct and Corrective Actions Standards

According to the GPO Standards of Conduct Directive, which applies to every GPO employee,¹⁶
The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by GPO employees and special employees is essential to assure the performance of GPO's business. The avoidance of misconduct and conflicts of interest on the part of GPO employees and special employees through informed judgment is indispensable to the maintenance of these standards.

The directive states that its objective is to eliminate the appearance of impropriety or conflict as well as any actual wrongdoing. GPO personnel shall:

...avoid any action, whether or not specifically prohibited by law or regulation (including the provisions of this Directive), which would result in or might create appearance of, among other things:

- a. Using public office for private gain;*
- b. Giving preferential treatment to any person;*
- c. Impeding Government efficiency or economy;*
- d. Losing complete independence or impartiality;*
- e. Making a Government decision outside official channels; or*
- f. Affecting adversely the confidence of the public in the integrity of the Government.*

The information presented herein, establishes by preponderance of the evidence that Sherman and Jackson, Jr., have violated statutes, regulations, and GPO directives as they relate to the hiring of two unqualified persons.

The GPO Corrective Actions Directive lists the penalty for "Misrepresentation or providing false information on employment applications, personal history records, official government records, government business, inquiry, or investigation, either by omission or by making false entry" as removal "If the misrepresentation/false entry or omission would have impacted the hiring decision...."¹⁷

But for the misconduct of Sherman and Jackson, Jr., neither Herbert H. Jackson, III, nor Kimberly M. Travis would have been hired by GPO at the cost of \$437,387.63 to taxpayers.

¹⁶ Attachment (6)

¹⁷ Attachment (7)

Re: GPO Interim Report of Investigation (18-0011-I)

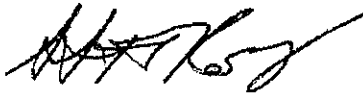
June 21, 2018

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Conclusion

This investigation is ongoing, and additional information is being developed. The matters I bring to your attention here are born out of the investigation and evidence developed to date. Both Sherman and Jackson, Jr., were interviewed and did not dispute the vast majority of facts presented herein.

I intend to publish a final report when the investigation is complete. Should you need any additional information or if I can be of service, please do not hesitate to contact me at (202) 512-0316.



Stephen T. Roy

Inspector General (Acting)

Attachments:

- (1) GPO Directive 610.6C Restrictions on Employment and Supervision of Relatives
- (2) Congressional Record – *Extensions of Remarks*, E1801, December 16, 2015
- (3) Materials Management Acquisition Regulation (MMAR) GPO Pub. 805.33, Part 37.104
- (4) MMAR, Part 37.105
- (5) MMAR, Part 6.3
- (6) GPO Directive 655.3B Standards of Conduct for Government Printing Office Officers and Employees
- (7) GPO Directive 655.4C Corrective Actions

CC: The Honorable Robert Brady
The Honorable Amy Klobuchar

For Official Use Only

GPO Directive 610.6C

September 24, 2012

SUBJECT CLASSIFICATION

ISSUE DATE

Restrictions on the Employment and Supervision of Relatives

TITLE/SUBJECT

1. **Purpose.** To revise the U.S. Government Printing Office's (GPO) policy on the employment and supervision of relatives.
2. **Authorities.** Title 5, U.S. Code, Sections 2302(b)(7) and 3110, and Title 44, U.S. Code, Section 301.
3. **Cancellation.** This Directive supersedes GPO Directive 611, Restriction on the Employment of Relatives, dated May 10, 2006.
4. **Background.** Section 3110 of Title 5, U.S. Code, prohibits a Federal official from appointing, promoting, or advocating the appointment or promotion of a relative in the agency where the official is serving or exercises jurisdiction. In addition, Section 2302(b)(7) of Title 5, U.S. Code, makes it a "prohibited personnel practice" for a person in authority to "appoint, employ, promote, advance, or advocate for the appointment, employment, promotion, or advancement of a relative."
5. **Coverage.** This Directive applies to all positions, officials, and employees within the GPO.
6. **Definitions.**
 - a. **Relative** - An individual who is related to an official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
 - b. **Official** - Any GPO employee who has the authority to appoint, employ, promote, or advance individuals or recommend the appointment, employment, promotion, or advancement of individuals. The authority to appoint, employ, promote, or advance individuals has been delegated to the Chief Human Capital Officer. Managers and supervisors have been delegated the authority to recommend appointment, employment, promotion, or advancement.
 - c. **Indirectly supervise** - To supervise an individual employed within one's subordinate supervisory chain of command. The indirect supervisory relationship exists notwithstanding the number of intervening levels of supervision.

ORIGINATING OFFICE	ORIGINATION DATE	EFFECTIVE DATE
OGC	SEPTEMBER 24, 2012	SEPTEMBER 24, 2012

7. Restrictions.

a. No official of the GPO will appoint, employ, promote, advance one of his or her relatives, or recommend the appointment, employment, promotion, or advancement of one of his or her relatives.

b. No official will refer one of his or her relatives to another official under his or her supervision for consideration for promotion or appointment.

c. No GPO employee will directly or indirectly supervise any of his or her relatives. If a situation arises where an employee becomes a supervisor of a relative as a result of reorganization, marriage, or other circumstance, action shall be taken to resolve the conflict as soon as possible. Most of these cases can be resolved through reassignment. Every effort will be made by GPO management to minimize personal hardship (such as changes in commuting areas and loss of career opportunities) to the affected individuals.

d. Nothing in this policy precludes relatives from working within the same organizational component (even at lower levels in the same section or unit), so long as one relative is not in a supervisory position over the other relative, is not in a position to influence the promotion or advancement of that relative, and did not advocate the hiring of the relative. Although this policy does not preclude relatives from working within the same organizational component, such situations may be disruptive to the work environment, and managers/supervisors should consult with the Human Capital Office and the Office of General Counsel prior to making hiring decisions involving relatives.

e. Any individual appointed, employed, promoted, or advanced in violation of subparagraph a above is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced. 5 U.S.C. 3110(c).

8. Exceptions.

a. An individual, with veteran's preference, who has been referred on an Office of Personnel Management certificate of eligibles, may be appointed if the passing over of this individual would result in the appointment of an eligible who does not have veteran's preference.

b. When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in 5 C.F.R. § 230.402(a)(1), a GPO official may employ relatives to meet those needs without regard to the restrictions in Section 3110 of Title 5, U.S. Code, and this Directive. Appointments under these conditions are temporary not to exceed one month, but may be extended for a second month if the emergency need still exists.

c. Exceptions may be approved by the Chief Human Capital Officer, in consultation with the responsible supervisor and with the Ethics Officer within the Office of General Counsel, for the following reasons:

- (1) Filling vacancies at isolated locations;
- (2) Appointing relatives as temporary employees for a period not-to-exceed 180 working days; or
- (3) Filling positions when all recruitment efforts have been unsuccessful in producing other qualified candidates.

Approved exceptions are expected to be extremely rare in cases of direct supervision.

9. Responsibilities

a. The Chief Human Capital Officer shall ensure that the restrictions listed in this Directive are not violated when processing recruitment, promotion, and reassignment actions. The Chief Human Capital Officer is also responsible for providing proper information and guidance to supervisors and employees regarding restrictions on employment of relatives.

b. Supervisors and other management officials shall familiarize themselves with this Directive and comply with its provisions.

c. Where a relative is assigned to a position where one relative may directly or indirectly supervise, control, or influence the work or the employment status of the other relative, or the affairs of the organizational unit in which the other relative is employed, the relatives are responsible for:

- (1) Advising their superiors and the Office of Human Capital of the family and work relationship;
- (2) Recusing themselves from any actions that would have a direct and predictable effect on each other; and
- (3) Consulting as needed with the agency Ethics Officer with respect to any actions that would raise an actual or apparent conflict of interest or lack of impartiality contrary to the restrictions regarding the employment of relatives.

d. Supervisors are also responsible for:

- (1) Specifically reviewing the work relationships of those persons with relatives in GPO. If any question exists in a supervisor's mind regarding the propriety of the situation, he or she should officially request guidance from the Office of Human Capital.
- (2) Taking prompt action to address situations where they have organizational jurisdiction over two employees whose assignments are in conflict with this policy, with the assistance of the Office of Human Capital.

e. The Office of General Counsel, through the Ethics Officer, is responsible for responding to requests by GPO employees and officials for guidance on whether an action being contemplated would raise an actual or apparent conflict of interest or lack of impartiality contrary to the restrictions on the employment of relatives.

10. Penalties. Section 3110(c), Title 5, U.S.C., provides that "An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced." Payments made in violation of 5 U.S.C. 3110 are subject to recovery. In addition, a violation of any of the provisions of this Directive may be cause for disciplinary action against the employee who takes or advocates an unlawful personnel action.

11. Related Restrictions. Although not included in the prohibition against nepotism, employees should be mindful that appointing, promoting, or advancing the promotion or appointment of a member of one's household, or a close personal friend or a significant other, may also violate the GPO's standards of conduct found in GPO Directive 655.3B. GPO employees should take no actions that will cause an actual or apparent conflict of interest as a result of an employee's personal relationships and should avoid the appearance of a loss of impartiality in the performance of one's official duties.

12. Effective Date. This Directive is effective upon issuance.

13. Inquiries. For information, contact the Strategic Human Capital Policy Staff, Office of the Chief Human Capital Officer, on 202-512-1182.



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EXTENSIONS OF REMARKS

TRIBUTE TO CHUCK TURNER

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 16, 2015

Mr. ROGERS of Kentucky. Mr. Speaker, it is with great sorrow that I rise today to recognize Chuck Turner, a longtime Appropriations Committee professional staff member, who sadly passed away on December 8.

Chuck was a skillful appropriator, a beloved colleague, and a steadfast public servant. His 40-year career was dedicated to serving Congress, the Capitol Hill community, and the American people.

Chuck began his long career on Capitol Hill working for the Library of Congress, first in the U.S. Copyright Office, then in the Library's Financial Services Office, where he handled budget issues.

For the better part of the last 32 years, Chuck worked with the House Appropriations Legislative Branch Subcommittee: first on detail from the Library of Congress, and then—after proving himself to be invaluable—as senior staff for the Subcommittee.

His concern for and commitment to the Legislative Branch underscored everything he did. He consistently put the Committee and his work for the House before anything else.

He made sure that Members of Congress have the resources they need to do their legislative work on behalf of the American people. In particular, he maintained a deep affection for the Library of Congress—ensuring its work and collections remain available to the public and to the Members who rely on its information to do their jobs.

He also ensured that all who entered the Capitol Complex—be it staff, visitors, or the Members themselves—are safe—protected by a well-equipped Capitol Police force, in solid and secure facilities. His life's work can be felt each time you set foot in the Capitol Complex.

Chuck was recognized for his expertise and good work on more than one occasion. He was called upon to serve as a Special Investigator for the Select Committee to Investigate the Preparation for and Response to Hurricane Katrina. He took part in a staff delegation to Indonesia to help train members of the Indonesian parliament and their staff on the legislative budget process. And for several years, he not only worked with the House Legislative Branch Subcommittee, but he also helped the Senate with writing their Legislative Branch Appropriations bill.

Chuck was truly the epitome of a devoted public servant—he worked until the very end.

On a more personal level, Chuck was beloved by all those he worked with. His kindness, consideration, easy sense of humor, and loyal friendship is something that all could aspire to. The Legislative Branch, the House, and the Appropriations Committee will be a lesser place without him.

I want to thank Chuck for his decades of service, and for leaving his final mark on this

institution—the Legislative Branch bill that will be a part of the final, fiscal year 2016 omnibus legislation. His presence will be deeply missed in the halls of the Capitol.

TRIBUTE TO KAY RAYMOND

HON. DAVID YOUNG

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 16, 2015

Mr. YOUNG of Iowa. Mr. Speaker, I rise today to recognize and congratulate Kay Raymond, of Creston, Iowa, for being selected as Creston Volunteer of the Year for 2015.

Kay spent a number of years teaching special education before retiring 12 years ago. After retirement, Kay decided to use her free time to continue giving back to her community. Now she volunteers numerous hours a week as a volunteer for Friends of the Library, as a member and volunteer at the YMCA, and also gives back as a member of her church and at other local organizations.

Mr. Speaker, Kay's dedication to her community and her fellow Iowans is a true testament to her character. Her efforts embody the Iowa spirit and I am honored to represent her and Iowans like her in the United States Congress. I ask that my colleagues in the United States House of Representatives join me in congratulating Kay for her achievements and wishing her nothing but continued success.

RECOGNIZING THE ACHIEVEMENTS OF PHIL ROMANO

HON. EDDIE BERNICE JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 16, 2015

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, tonight I want to recognize the life and achievements of a brilliant and fascinating man—Phil Romano. Now, although Mr. Romano is not originally from Texas, he falls into the category of people who moved there as quickly as he could. A man that cannot easily be entertained, Mr. Romano bounced around the country before making Dallas his home, and bounced through multiple successful business projects before settling with a self-proclaimed and modest title: entrepreneur. However, Mr. Romano is much more than an entrepreneur. He is rich in character, and Dallas is proud to be his home.

Mr. Romano is best known for his successful career in the restaurant industry. His business ventures brought Texas as well as the nation beloved institutions such as Fuddrucker's, Romano's Macaroni Grill, and Eatzi's. These business ventures solidified his status as a successful businessman, but Mr. Romano helped satisfy much more than people's appetites.

When Mr. Romano was working with a small venture capital firm SHD Management

LLC, he had the keen eye to spot a good product. After talking to a cardiologist named Julio Palmaz, Mr. Romano agreed to invest capital and run the business operations for the balloon-expandable heart stent. It ended up becoming over a 10 million dollar invention, but more impressively than that, it saved countless lives, including Mr. Romano's, who now uses a heart stent after he helped invent it. When he worked in the restaurant industry he touched people's stomachs, and when he was a venture capitalist he touched people's hearts.

However, his success is most tangible in the impact he has on Dallas. His most recent project, Trinity Groves, will provide a community space for entrepreneurs to grow, businesses to invest, and people to enjoy. In addition to that, his affinity for art, embodied not only in his home but in his studio on Dragon Street in Dallas, will solidify his legacy as a brilliant and deep man.

Mr. Speaker, whether it was with a burger, a heart stent, a community, or a painting, throughout his life, Phil Romano has left a Texas-sized impression on Dallas, the city he loves that loves him back.

THE CHRISTIAN AND YEZIDI GENOCIDE

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 16, 2015

Mr. SMITH of New Jersey. Mr. Speaker, each day, our newspapers, magazines, radios and television screens are filled with images of people fleeing territory controlled by the Islamic jihadist group known as the Islamic State of al-Sham, or ISIS.

More than half of the 635,000 refugees—an estimated 53 percent—in Europe are from Syria alone, according to the United Nations High Commission for Refugees or UNHCR.

While violence plays the major role in the impetus of Syrians to leave their homes, Shelly Pitterman of the UNHCR testified at a hearing I chaired on October 20th that the main trigger for flight from refugee camps or shelter in nations like Jordan is the humanitarian funding shortfall. In recent months, he told us that the World Food Programme cut its program by 30 percent, and the current Syrian Regional Refugee and Resilience Plan for 2015 is only 41 percent funded. The UNHCR expects to receive just 47 percent of the funding it needs for Syria over the next year.

One year ago this month, the United Nations Office for the Coordination of Humanitarian Affairs issued a report that detailed a worsening humanitarian situation in Syria. An estimated 12.21 million were in need of humanitarian assistance, including 7.6 million internally displaced people and more than 5.6 million children in need of assistance. An estimated 4.8 million people were in need of humanitarian assistance in hard to reach areas

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

(2) In doubtful cases, obtain the review of legal counsel; and

(3) Document the file (except as provided in paragraph (b) of this section) with—

(i) The opinion of legal counsel, if any,

(ii) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in 37.104(b), and

(iii) Any further documentation that the contracting agency may require.

(b) Nonpersonal services contracts are exempt from the requirements of paragraph (a)(3) of this section.

(c) Ensure that performance-based contracting methods are used to the maximum extent practicable when acquiring services.

(d) Ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 42 U.S.C. 13041, as amended, and agency procedures.

37.104 Personal services contracts.

(a) A ~~personal services contract~~ is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) Agencies shall not award personal services contracts unless specifically authorized by statute (e.g., 5 U.S.C.3109) to do so.

(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract. The sporadic, unauthorized supervision of only one of a large number of contractor

employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see (d) of this section).

(d) The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

(1) Performance on site.

(2) Principal tools and equipment furnished by the Government.

(3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(5) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—

(i) Adequately protect the Government's interest;

(ii) Retain control of the function involved; or

(iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(e) When specific statutory authority for a personal service contract is cited, obtain the review and opinion of legal counsel.

(f) Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (e.g., benefits, taxes, conflicts of interest). Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

37.105 Competition in service contracting.

(a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in 6.401(a) are met, (except see 6.401(b)).

(b) The provisions of statute and Part 6 of this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

37.106 Funding and term of service contracts.

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation

(2) In doubtful cases, obtain the review of legal counsel; and

(3) Document the file (except as provided in paragraph (b) of this section) with—

(i) The opinion of legal counsel, if any,

(ii) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in 37.104(b), and

(iii) Any further documentation that the contracting agency may require.

(b) Nonpersonal services contracts are exempt from the requirements of paragraph (a)(3) of this section.

(c) Ensure that performance-based contracting methods are used to the maximum extent practicable when acquiring services.

(d) Ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 42 U.S.C. 13041, as amended, and agency procedures.

37.104 Personal services contracts.

(a) A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) Agencies shall not award personal services contracts unless specifically authorized by statute (e.g., 5 U.S.C.3109) to do so.

(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract. The sporadic, unauthorized supervision of only one of a large number of contractor

employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see (d) of this section).

(d) The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

(1) Performance on site.

(2) Principal tools and equipment furnished by the Government.

(3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(5) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—

(i) Adequately protect the Government's interest;

(ii) Retain control of the function involved; or

(iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(e) When specific statutory authority for a personal service contract is cited, obtain the review and opinion of legal counsel.

(f) Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (e.g., benefits, taxes, conflicts of interest). Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

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(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

6.301 Policy.

(a) Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable (see 6.302).

(c) Contracting without providing for full and open competition shall not be justified on the basis of—

(1) A lack of advance planning by the requiring activity; or

(2) Concerns related to the amount of funds available (e.g., funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in 6.102(a) or (b), if appropriate, or any other procedures authorized by this regulation.

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

6.302-1 Sole Source.

(a) *Authority.* (1) Citations: 41 U.S.C. 5(3). When only one source of supply is available and the contracting officer shall so certify.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that—

(A) Demonstrates a unique and innovative concept (see definition at 2.101), or, demonstrates a unique capability of the source to provide the particular research services proposed;

(B) Offers a concept or services not otherwise available to the Government; and

(C) Does not resemble the substance of a pending competitive acquisition.

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in—

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or

(B) Unacceptable delays in fulfilling the agency's requirements.

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302-7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by—

(i) Unique supplies or services available from only one source or only one supplier with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(3) When acquiring utility services (see 41.101), circumstances may dictate that only one supplier can furnish the service (see 41.202); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved in accordance with MMAR 6.303 and 6.304. The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. (Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced

by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)

(d) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered.

6.302-2 Public Exigency.

(a) *Authority.* (1) Citations: 41 U.S.C. 5(2).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where—

(1) An unusual and compelling urgency precludes full and open competition; and

(2) Delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-3 [Reserved].

6.302-4 [Reserved].

6.302-5 Authorized or required by statute.

(a) *Authority.* (1) Citations: 41 U.S.C. 5.

(2) Full and open competition need not be provided for when—

(i) A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or

(ii) The agency's need is for a brand name commercial item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6).

(2) Qualified Nonprofit Agencies for the Blind or other Severely Disabled—41 U.S.C. 46-48c (see Subpart 8.7).

(3) Government Printing and Binding—44 U.S.C. 501-504, 1121 (see Subpart 8.8).

(4) The Robert T. Stafford Disaster Relief and Emergency Assistance Act—42 U.S.C. 5150 (see Subpart 26.2).

6.302-6 [Reserved].

6.302-7 [Reserved].

6.303 Justifications.

6.303-1 Requirements.

(a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer—

(1) Justifies, if required in 6.302, the use of such actions in writing;

(2) Certifies the accuracy and completeness of the justification; and

(3) Obtains the approval required by 6.304.

(b) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

(c) Justifications required by paragraph (a) of this section may be made on an individual or class basis. Any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

(d) If the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition in an acquisition that would otherwise be subject to the Trade Agreements Act (see Subpart 25.4), the contracting officer must forward a copy of the justification, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.

(e) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

6.303-2 Content.

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.

(9) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(b) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum

needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

6.304 Approval of the justification.

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—

(1) For a proposed contract not exceeding \$500,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.

(2) For a proposed contract over \$500,000 but not exceeding \$10,000,000, by an official described in paragraph (a)(3) or (a)(4) of this section. This authority is not delegable.

(3) For a proposed contract over \$10,000,000 but not exceeding \$50,000,000, by the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over \$50,000,000, by the senior procurement executive of the agency in accordance with agency procedures. This authority is not delegable.

(b) Any justification for a contract awarded under the authority of 6.302-7, regardless of dollar amount, shall be considered approved when the determination required by 6.302-7(c)(1) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with agency procedures. The approval level shall be determined by the estimated total value of the class.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

6.305 Availability of the justification.

(a) The justifications required by 6.303-1 and any related information shall be made available for public inspection. Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

(b) If a Freedom of Information request is received, contracting officers shall comply with Subpart 24.2.



GPO Directive 655.3B

SUBJECT CLASSIFICATION

September 24, 2012

ISSUE DATE

Standards of Conduct for Government Printing Office Officers and Employees

TITLE/SUBJECT

1. **Purpose and Scope.** This Directive sets out the standards of ethical and financial conduct for GPO employees, including consultants, advisers, and other special Government employees. Employees must familiarize themselves with all GPO regulations governing employee conduct. Responsibility and accountability for ensuring compliance rests upon all GPO employees and their supervisors.
2. **Cancellation.** This Directive supersedes GPO Instruction 655.3A, Subject: Standards of Conduct for Government Printing Office Officers and Employees, dated June 10, 1988, and GPO Instruction 610.4, Subject: Reporting Employment Outside the GPO, dated July 31, 1972.
3. **General.** Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each GPO employee shall respect and adhere to the principles of ethical conduct set forth in this Directive. The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by GPO employees and special employees is essential to assure the performance of GPO's business. The avoidance of misconduct and conflicts of interest on the part of GPO employees and special employees through informed judgment is indispensable to the maintenance of these standards.

Employees and special employees are expected to maintain high standards of honesty, integrity, impartiality, and other ethical and moral conduct and to avoid any actions, whether on or off duty that could reflect adversely on the GPO or Government service, or that would jeopardize the employee's fitness for duty, or effectiveness in dealing with other employees or with the public. In addition, attitude, courtesy, consideration, and promptness in carrying out one's official duties are important aspects of conduct and service.

The following general principles apply to every GPO employee and may form the basis for the standards contained in this Directive. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper. To these ends, GPO employees are expected at all times to adhere to the following basic obligations of public service:

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

ORIGINATING OFFICE	ORIGINATION DATE	EFFECTIVE DATE
OGC	SEPTEMBER 24, 2012	SEPTEMBER 24, 2012

- b. Employees shall not hold financial interests that conflict with the conscientious performance of their duties.
- c. Employees shall not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.
- d. An employee shall not, except pursuant to such reasonable exceptions as are provided by this Directive, 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 GPO, or whose interests may be substantially affected by the performance or non-performance of the employee's duties.
- e. Employees shall put forth honest effort in the performance of their duties.
- f. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the government.
- g. Employees shall not use their public office for the personal gain of themselves or any other person or nongovernmental entity.
- h. Employees shall act impartially and not give preferential treatment to any private organization or individual.
- i. Employees shall protect and conserve federal property and shall not use it for other than authorized activities.
- j. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment that conflict with official government duties and responsibilities.
- k. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- l. 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.
- m. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, disability, or sexual orientation.
- n. Employees shall always be candid with their supervisors, investigative employees, Agency customers, and the public in the performance of their duties.

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

p. Employees must always cooperate fully with audits, investigations, or reviews conducted by the Inspector General, GPO management, or other authorized internal or external organizations.

To accord with these concepts, this Directive sets forth GPO's regulations prescribing standards of conduct and responsibilities for GPO employees and special employees.

4. Definitions

a. "Apparent conflict" means a situation where a member of the public would have reasonable cause to believe that an employee may be in conflict, even though he or she might not be. It is not necessary for an employee to have actually taken a Government action related to private financial interests for there to be an apparent conflict.

b. "Conflict" means a situation where:

- (1) One's public duty is or will be affected by his or her financial interest; or
- (2) One's financial interest is or will be affected by decisions he or she makes or operations that he or she is involved in an official capacity.

c. "Contractor" is a person or entity that is engaged in or seeks a business or financial relation of any sort with GPO; or conducts operations or activities that are either regulated by GPO or significantly affected by GPO decisions; or has interests that may be substantially affected by the performance or non-performance of the official duties of GPO employees or special Government employees, and includes an agent or representative of any such person or entity.

d. "Employee" means any officer or employee of GPO who is not a special Government employee.

e. "GPO Ethics Officer" is the General Counsel or an attorney in the Office of the General Counsel designated by the General Counsel to serve as the Agency's ethics officer, pursuant to a delegation of authority from the Public Printer.

f. "Gift" means any gratuity, favor, entertainment, hospitality, transportation, loan, or any other tangible benefit (for example, discounts, passes, or promotional vendor training) given to or on behalf of GPO personnel or their family or members of their household, for which fair market value is not paid by the recipient or the Government.

g. "Nominal" means anything of not more than 20 dollars in value in any one occurrence from any single source, and not more than 50 dollars in value in any given year from any single source.

h. "Person" means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this directive, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his or her official capacity on behalf of that agency or entity.

i. "Personnel" means both employees and special Government employees.

j. "Special Government Employee" means an officer or employee who has been employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis, as defined by 18 U.S.C. 202.

k. "Transacts business" means to take or refrain from taking any action that affects an interest of a person or contractor, or to supervise, directly or indirectly, or to otherwise influence an employee who takes or refrains from taking such action.

5. **Proscribed Actions.** In considering the prohibitions of this section, GPO personnel must constantly be aware that the provisions here enumerated set forth standards of conduct, which are broader than the prohibitions and guidance stated in the remainder of this directive. Therefore, personnel should look to these general prohibitions when assessing the advisability of a particular course of conduct. The broadly stated provisions of this rule are aimed at eliminating the appearance of impropriety or conflict as well as any actual wrongdoing. Accordingly, personnel should avoid any action, whether or not specifically prohibited by law or regulation (including the provisions of this Directive), which would result in or might create appearance of, among other things:

- a. Using public office for private gain;
- b. Giving preferential treatment to any person;
- c. Impeding Government efficiency or economy;
- d. Losing complete independence or impartiality;
- e. Making a Government decision outside official channels; or
- f. Affecting adversely the confidence of the public in the integrity of the Government.

6. **Gifts, Entertainment, and Favors.** Acceptance of gifts, no matter how innocently tendered or received, from those who have or seek business dealings with GPO may be a source of embarrassment to the Agency, may impair public confidence in the integrity of the conduct of the Government's business, and may delay or negatively affect the Agency's procurement of goods and services. Therefore, GPO employees, their family or any member of their household shall not:

a. Solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, service, or any other thing of monetary value from any person who transacts business with or on behalf of the GPO:

- (1) Who has, or is seeking to obtain, contractual or other business or financial relations with the GPO;
- (2) Who conducts operations or activities regulated by the GPO; or
- (3) Who has interests that may be substantially affected by the performance or non-performance of his or her official duties.

b. The restrictions of paragraph 6a of this Directive do not prohibit employees from the following:

(1) The acceptance of food and non-alcoholic beverages of nominal value offered from an outside source at a plant, office, or place of business on an infrequent basis when the conduct of official business within the plant, office, or place of business will be facilitated and when no provisions exist for individual payment. Acceptance of pastries, coffee, soft drinks, snacks, or other food or non-alcoholic beverages of nominal value whether within or outside GPO, offered as a normal courtesy or matter of practicality is permitted when official business will be facilitated. An employee shall avoid all other situations (e.g., dining in private clubs or acceptance of food and beverages in excess of nominal value) where there is no opportunity for individual payment for the employee's food or refreshments at the time. However, even when there exists the opportunity to make payment, acceptance should be avoided if acceptance would still create the appearance of a conflict of interest;

(2) The acceptance of food and refreshments at widely-attended gatherings of mutual interest to the government and the private sector such as receptions, seminars, conferences, and training sessions, so long as:

(a) The food and refreshments offered in conjunction with the event are not excessive;

(b) The timing or the reason for the event would not create an appearance of impropriety; and

(c) The employee's supervisor and the GPO Ethics Officer are informed of the invitation to the event and determine in advance that it is in the interest of GPO for the employee to attend the event (GPO Form 776, which is available from the Office of General Counsel and on the GPO intranet) shall be used for this purpose.

(3) The acceptance of food and refreshments when offered by a federal entity at government expense when no inherent conflict exists.

(4) The acceptance of items of value when the circumstances make it clear that it is family or personal relationships rather than the business of the persons concerned which govern and are the motivating factors;

(5) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, notepads, calendars, and other items of nominal value;

(6) The acceptance of meals and refreshments as provided to all panelists, when participating as a panelist in an educational program;

(7) The acceptance of gifts given for participation in an educational program when they are:

- (i) of modest value;
- (ii) provided to all participants in the program; or
- (iii) in the nature of a remembrance traditional to the particular sponsor institution;

(8) The acceptance of suitable mementos or awards of nominal value for a meritorious public contribution or achievement;

(9) The acceptance of items available to the public generally, or a large segment of the public (such as university scholarships, discounts for Federal employees, and attendance at free exhibitions of GPO contractors at public trade fairs); or

(10) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the GPO Ethics Officer.

(11) The Public Printer may authorize a GPO employee to accept a contribution or award (in cash or in kind) incident to training or to accept payment (in cash or in kind) of travel, subsistence, and other expenses incident to attendance at meetings from a nonprofit organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code, if:

(a) The conditions specified in section 4111 of title 5, United States Code, are met; and

(b) In the judgment of the Public Printer, the following two conditions are met:

(i) The contribution, award, or payment is not a reward for services to the organization prior to the training or meeting; and

- (ii) Acceptance of the contribution, award, or payment:
 - a) Would not reflect unfavorably on the employee's ability to carry out official duties in a fair and objective manner;
 - b) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;
 - c) Would otherwise be proper and ethical for the employee concerned given the circumstances of the particular case.

c. GPO employees shall not solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than him or herself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this paragraph does not prohibit the occasional giving of gifts of modest value to an employee in a superior position or the receipt of such gifts by a superior or the use of completely voluntary contributions of modest amounts by employees to establish funds for the limited purpose of providing token remembrances or gifts of modest value to an employee in a superior position on special non-recurring occasions.

d. GPO employees shall not accept from a foreign government a gift, decoration, or other thing of more than minimal value except in accordance with the provisions of 5 U.S.C. 7342. While the definition of "minimal value" is currently established by the General Services Administration to be not more than \$350, this amount is subject to periodic adjustment by GSA.

7. **Outside Employment and Activity.** Employees may engage in employment outside the GPO (except as noted in subparagraph a. below) without official approval. However, those performing such employment must report it to their supervisor. "Outside Employment" means any form of compensated or uncompensated, regularly scheduled or recurring, Federal or non-Federal employment or business relationship involving the provision of personal services by the employee.

Reporting Procedure. Employees who plan to accept employment outside the GPO must complete a GPO Form 643, 'Reporting Outside Employment' and submit it to their immediate supervisor 14 days prior to beginning outside employment. Supervisors should forward a copy of the form to their supervisor. It is the responsibility of each employee to keep his or her record of outside employment current by submitting a new GPO Form 643 when changes occur, including termination of outside employment.

a. **Excluded Employment.** Employees may not engage in any form of employment outside of the GPO that:

- (1) May be of such a nature as to cause embarrassment to the Agency.
- (2) Represents a conflict of interest with official duties or responsibilities.
- (3) Tends to impair mental or physical capacities to perform GPO duties and responsibilities efficiently and in an acceptable manner.
- (4) Involves the acceptance of a fee, compensation, gift, payment of expense, or any other thing of substantial monetary value in circumstances, which acceptance may result in or create the appearance of a conflict of interest.
- (5) Establishes relationships or property interests that may result in a conflict between their private interests and their official duties;
- (6) May involve the use of information, secured as a result of employment by the GPO, to the detriment of the GPO or the public interest, or to the preferential advantage of any person, corporation, public agency, or group.
- (7) Involves employment with any person, firm, or other private organization having business either directly or indirectly with the GPO, when such employment might result in or give the appearance of a conflict of interest or otherwise be incompatible with the law.
- (8) Would involve the violation of a Federal or State statute, a local ordinance, or regulation to which the employee is subject;
- (9) Would identify GPO or its employee officially with any organization manufacturing, distributing, or advertising a product relating to work conducted by GPO, or would create the false impression that it is an official action of GPO, or represents an official point of view. In any permissible outside employment, care must be taken to insure that names and titles of GPO employees are not used to give the impression that the activity or product is officially endorsed or approved by GPO or is part of GPO activities;

(10) Would involve the use of the employee's time during his official working hours;

(11) Would involve the use by the employee of official facilities, e.g., office space, office machines, or supplies, or the services of other employees during duty hours;

Employees may not be employed by another Federal agency if basic compensation received for services to GPO and any other agency is for more than a total of 40 hours in one calendar week.

b. Allowable Activities. Employees may:

(1) Participate in the activities of national or state political parties not prohibited by law. However, employees should be particularly aware of the restrictions imposed on their activities by the "Hatch Act" (5 U.S.C. 7321-7326).

(2) Participate in the affairs of or accept an award for a meritorious public contribution or achievement from a charitable, religious, professional, social, fraternal, non-profit educational or recreational, public service, or civic organization.

(3) Participate in writing, speaking, or editing activities.

In applying the provisions of this subpart, particularly with regard to writing, speaking, or editing activities, GPO employees must distinguish between official and non-official activities. In connection with writing, speaking, or editing, an activity will normally be considered official if:

(1) It is the result of a request addressed to GPO to furnish a speaker, author, editor, or of an invitation addressed to an employee of GPO to perform these activities in his or her official capacity, rather than as a private individual; or

(2) The activity is performed in conjunction with attendance at a meeting approved under the authority of 5 U.S.C. 4110 (where appropriated money is available for the expenses of attendance at meetings).

The fact that an activity was prepared for outside of duty hours or was performed after normal duty hours is not determinative of whether it is official or nonofficial.

c. Limitations Applicable to Certain Non-career Employees.

(1) Outside Earned Income Limitation. Any non-career GPO employee who occupies a position for which the basic rate of pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule may not in any calendar year have outside earned income attributable to such calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule. 5 U.S.C. app. 4 § 501 (a).

(2) Prohibitions on Receipt of Compensation. Any non-career GPO employee who occupies a position for which the basic rate of pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule may not receive any compensation for:

(a) affiliating with or being employed by an entity such as a partnership or corporation that provides professional services involving a fiduciary relationship.

(b) practicing a profession that involves a fiduciary relationship.

(c) serving as an officer or a member of the board of an association, corporation, or other entity.

(3) Other Restrictions.

(a) Any non-career GPO employee who occupies a position for which the basic rate of pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule may not permit his or her name be used by an entity such as a partnership or corporation that provides professional services involving a fiduciary relationship.

(b) Any non-career GPO employee who occupies a position for which the basic rate of pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule must receive advance authorization to engage in teaching for compensation.

8. Financial Conflict of Interest.

a. An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Government duties and responsibilities;

(2) Have an interest (financial or non-financial) in any contract or other particular matter administered or controlled by the GPO, that the employee was personally or substantially involved in through the performance of his or her duties; or

(3) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Government employment.

b. This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, regulation, or this Directive.

c. Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations that are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

d. GPO employees shall, at the request of the Public Printer or the Public Printer's designee, furnish the GPO Ethics Officer within thirty (30) days of the request, with:

(1) A list of the names of all corporations, companies, or other business enterprises, partnerships, non-profit organizations, and educational or other institutions with which he or she is connected in any way, or which he or she has any ownership interest;

(2) A list of the names of his or her creditors, other than those to whom he or she may be indebted by reason of a mortgage on a property, which he or she occupies as a personal residence, or to whom he or she may be indebted for current and ordinary household and living expenses; and

(3) A list of his or her interest in real property or rights in lands, other than property, which he or she occupies as a personal residence.

e. Reporting Requirements. The following employees must submit a Conflict of Interest Certification, GPO Form 1946, within thirty (30) days of appointment to the GPO if a new employee, and thereafter no later than January 1 of each year to the Ethics Officer:

(1) The Deputy Public Printer, the Assistant Public Printers, Managing Directors and all Department/Service heads.

(2) All heads of staff offices reporting directly to the Public Printer.

(3) All employees whose positions have been identified by their Department/Service heads as positions that have basic duties and responsibilities that require them to exercise judgment in making decisions or in taking action on contracting, certifying, or procurement matters.

f. In full consideration of issues involving Conflict of Interest, employees are strongly encouraged to consult and familiarize themselves with both GPO Instruction 655.10A and the Procurement Integrity Act (41 U.S.C. §§ 2101-2107).

9. **Misuse of Information.** GPO personnel shall not, directly or indirectly, for the purpose of furthering a private interest, use or allow the use of official information, that has not been made available to the general public and, that has been obtained by such employee through, or in connection with, Government employment or application for Government employment.

10. **Use of Government Facilities, Property, and Staff.**

a. GPO personnel shall not directly or indirectly, through an agent or intermediary, take or dispose of, or allow the use of, taking, or disposing of Government property, facilities, or services of any kind, including property leased to the Government, for other than officially approved activities.

b. Government facilities, property, and staff (such as stationery, computer and typing assistance, or duplication and chauffeur services) shall be used only for officially approved activities.

c. GPO personnel have a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted to GPO personnel, and shall disclose misuse of the same to the appropriate authority.

d. Use of Internet, Intranet, and email on or through GPO-owned computers, services, systems, or networks, or while in an official capacity acting for, on behalf of, or for the benefit of the GPO, is to be used primarily for official duties. Some reasonable personal use will be permitted so long as that use does not involve participation in a prohibited use and/or does not affect the quality and quantity of the employee's performance of official duties. This applies to any reasonable personal use of the Internet, Intranet and email, including personal email accounts accessed via the GPO network (whether on a GPO computer or non-GPO computer that GPO employees or contractors may perform. Use by GPO employees is governed by GPO Directive 825.29C, Subject: GPO Internet and Email Policy dated May 4, 2011.

11. Indebtedness.

a. GPO personnel shall pay their just financial obligations in a proper and timely manner, especially those imposed by law, such as Federal, State, or local taxes. (All Federal employees are encouraged to be mindful of their tax obligations, to include the timely filing of tax returns and avoiding delinquencies). For purposes of this Directive, a "just financial obligation" means one acknowledged by the employee, or reduced to judgment by a court.

b. In a dispute between GPO personnel and an alleged creditor, or in instances where an employee contests the status of tax liens, child support, alimony, or other financial obligations, GPO will not undertake to determine the validity or amount of a disputed debt. The responsibility to clarify or correct the status of any obligation rests with the employee.

12. Gambling, Betting and Lotteries. GPO personnel shall not participate, while on property owned or leased by the Government or while on duty for GPO, in any gambling activity, including the operation of a gambling device; participate in a game for money or property; or sell or purchase a numbers slip or ticket, except as otherwise authorized by law.

13. Standards for Special Government Employees. This paragraph applies to all consultants, advisers, or other special Government employees of the GPO.

a. A special Government employee shall not use his or her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

b. A special Government employee shall not use inside information obtained as a result of his or her Government employment for private gain for himself or herself or another person either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority that has not become part of the body of public information. However, a special Government employee may engage in teaching, lecturing, and writing to the same extent, and subject to the same restrictions, as provided in paragraph 7 for employees.

c. A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

d. The provisions of paragraphs 3, 5, 6, 9-12, and 14-18 of this Directive apply to special Government employees in the same manner as to employees.

e. At the time of employment, any adviser, consultant, or other special GPO employee may be required by the Public Printer or the Public Printer's designee to furnish a list of all other employment containing the names of all corporations, companies, firms, State or local government organizations and educational or other institutions, that he or she is serving as employee, officer, member, owner, director, trustee, adviser, or consultant. In addition, he or she shall list such other financial information, as the Public Printer shall decide is relevant in light of the duties the appointee is to perform. Throughout the period during which the special employee is on the GPO rolls, the list will be kept current by the special employee.

14. Non-discrimination and Harassment. In the performance of their duties, GPO employees shall not discriminate on the grounds of race, color, religion, national origin, sex, age, disability, sexual orientation, veteran's status, or in reprisal against another employee because of that employee's prior protected activity. Nor shall they discriminate against other staff members because of another employee's political opinions or affiliations. Further, harassment of any kind is prohibited. Employees shall disclose evidence of discrimination or harassment to the appropriate authority.

15. Ethics Advice. Employees who have questions about the application of this Directive to particular situations should seek advice from the GPO Ethics Officer. Disciplinary action for violating this Directive will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of the Ethics Officer, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of the Ethics Officer cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of the Ethics Officer may be a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to the Ethics Officer are not protected by an attorney-client privilege. The Ethics Officer is required by 28 U.S.C. 535 to report any information he or she receives relating to a violation of the criminal code, title 18 of the United States Code.

16. Miscellaneous Statutory Provisions. The attention of GPO personnel is directed to the following statutory provisions that all personnel should be familiar with that may apply as a result of Federal employment:

a. Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, including:

(1) The prohibition against bribery of public officials and the prohibition against a public official accepting anything of value for or because of any official act performed or to be performed (18 U.S.C. 201), which imposes a maximum penalty of a fine equal to not more than three times the money or thing received; 15 years imprisonment; or both; and removal.

(2) The prohibition against receiving compensation for claims, contracts, etc. (18 U.S.C. 203), which imposes a maximum penalty of a fine; two years imprisonment; or both; and removal.

(3) The prohibition against prosecuting claims against and acting as agent or attorney for others in matters affecting the Government (18 U.S.C. 205), which imposes a maximum penalty of a \$10,000 fine; two years imprisonment; or both.

(4) The prohibition against prosecuting claims involving matters connected with former duties (18 U.S.C. 207), which imposes a maximum penalty of a \$10,000 fine; two years imprisonment; or both.

(5) The prohibition against an employee or special Government employee acting or participating in any matter, that he or she, his or her immediate family, his or her partner, or an organization with which he or she is connected or is seeking employment has a financial interest (18 U.S.C. 208), which imposes a maximum penalty of a \$10,000 fine; two years imprisonment; or both.

(6) The prohibition against an employee receiving salaries or contributions from other than Government sources for his or her Government services (18 U.S.C. 209), which imposes a maximum penalty of a \$5,000 fine; one year imprisonment; or both.

(7) The prohibition against acceptance or solicitation to obtain public office (18 U.S.C. 211), which imposes a maximum penalty of a \$1,000 fine; one-year imprisonment; or both.

b. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913), which imposes a maximum penalty of a \$500 fine; one year imprisonment; or both; and removal.

c. The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918), which impose a maximum penalty of a \$1,000 fine; one year and a day imprisonment; or both; and removal.

d. The prohibition against gifts to superiors (5 U.S.C. 7351).

e. The prohibitions against:

(1) The disclosure of classified information (18 U.S.C. 798).

(2) The disclosure of confidential information (18 U.S.C. 1905), which imposes a maximum penalty of a \$1,000 fine; one year imprisonment; or both; and removal.

(3) Improperly divulging information relating to tax returns, trade secrets, and other proprietary or confidential information filed with the government (18 U.S.C. 1905).

f. The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

- g. The prohibition against the misuse of a Government vehicle (31 U.S.C. 1344, 1349), which imposes a maximum penalty of removal.
- h. The prohibition against the misuse of the franking privilege (18 U.S.C. 1719), which imposes a maximum penalty of a \$300 fine.
- i. The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917), which imposes a maximum penalty of a \$1,000 fine; one year imprisonment; or both.
- j. The prohibition against fraud or making false statements in a Government matter (18 U.S.C. 1001), which imposes a maximum penalty of a \$10,000 fine; five years imprisonment; or both.
- k. The prohibition against removing, mutilating, or destroying a public record (18 U.S.C. 2071), which imposes a maximum penalty of a \$2,000 fine; three years imprisonment; or both; and removal.
- l. The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508), which imposes a maximum penalty of a \$5,000 fine; 10 years imprisonment; or both.
- m. The prohibitions against:
 - (1) Embezzlement of Government money or property (18 U.S.C. 641), which imposes a maximum penalty of a \$10,000 fine; 10 years imprisonment; or both; and
 - (2) Failing to account for public money (18 U.S.C. 643), which imposes a maximum penalty of a fine equal to the amount embezzled; 10 years imprisonment; or both; and
 - (3) Embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654), which imposes a fine equal to the amount embezzled; imprisonment of not more than 10 years; or both.
- n. The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285), which imposes a maximum penalty of \$5,000 fine; five years imprisonment; or both.
- o. The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, and 607, which impose a maximum penalty of a \$5,000 fine; three years imprisonment; or both.
- p. The provision relating to the denial of the right to petition Congress (5 U.S.C. 7102).
- q. The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219), which imposes a fine; two years imprisonment; or both.

r. The prohibition against a public official appointing or promoting a relative or advocating such an appointment or promotion (5 U.S.C. 3110).

s. The prohibition against the employment of an individual convicted of felonious rioting or related offenses (5 U.S.C. 7313).

t. The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees paid above GS-15, or a comparable pay level) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946).

u. The prohibitions against certain employees having any interest, direct or indirect, in the publication of any newspaper or periodical, or in any printing, binding, engraving, or lithographing of any kind, or in any contract for furnishing paper or other material connected with the public printing (18 U.S.C. 442), which imposes a maximum penalty of a \$1,000 fine; one year imprisonment; or both.

v. The prohibition against discrimination for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation (5 U.S.C. 2302(b)).

w. The prohibition against receiving basic pay from more than one Government position for more than the aggregate of forty (40) hours of work in one calendar week. (5 U.S.C. 5533).

17. **General Conduct Prejudicial to the Government.** GPO personnel will not engage in criminal, infamous, dishonest, immoral, or notoriously, disgraceful conduct, or any other conduct prejudicial to the Government.

18. **Reporting of Crimes.** All GPO Employees must report within five (5) calendar days to the Office of General Counsel any felony charge or any charge of any crime that occurs while employed with the Government Printing Office, where if convicted, there is the possibility of incarceration.

19. **Cooling Off Period for New Employees.** Employees coming to the GPO from private employment shall not participate in any matter directly affecting the financial interest of that private employer for at least 1 year after their private employment has terminated. Participation in a GPO matter affecting the interests of any prior employer in which the employee has a continuing financial interest, such as stock ownership or continued profit sharing, is not permissible regardless of the expiration of the cooling off period.

20. **Negotiations for Future Employment.** Those GPO employees who are required to file annual financial disclosure statements must also disclose to the House Committee on Ethics any negotiations or agreements for future non-Federal employment within three (3) business days of the beginning of the negotiations. Merely sending out a resume or contacting a job placement firm does not trigger the disclosure requirement. In addition, all employees must recuse themselves whenever there is a conflict of interest, or appearance of a conflict of interest caused by negotiation for future employment.

21. Post-Employment Restrictions.

a. Procurement-related employees. The Procurement Integrity Act, 41 U.S.C. 2101 – 2107, prohibits former employees from knowingly disclosing contractor bid or proposal information or source selection information to anyone not authorized to receive such information. In addition the Act imposes restrictions on employees who participated in any procurement in excess of \$10,000,000. Said employees cannot receive compensation from that contractor within one year after the employee:


(1) served as a contracting officer, member of a source selection board, or chief of a technical evaluation team;

(2) served as a program manager, deputy program manager, or administrative contracting officer; or

(3) personally made certain decisions such as approving an award, modification, task or delivery order, establishing overhead, or settling a claim.

b. Senior Level Employees. Any former GPO employee who was paid at a rate of pay equal to or greater than the rate of pay for level IV of the Executive Schedule for at least sixty (60) days, in the aggregate, during the 1-year period before the employee's GPO service terminated, is subject to certain post-employment restrictions. A former employee in this category is prohibited from communicating with or appearing before any GPO officer or employee for the purpose of influencing the GPO officer or employee, if the appearance or communication is made by the former employee on behalf of any other person (except the United States) and the former employee seeks action by an officer or employee of the GPO acting in his or her official capacity. This restriction lasts for one year after the termination of the employee's service at GPO. 18 U.S.C. 207

22. Inquiries. Inquiries should be directed to the Office of the General Counsel on 202-512-0033.



DAVITA VANCE-COOKS
Acting Public Printer



Directive 655.4C

May 17, 2017

SUBJECT CLASSIFICATION

ISSUE DATE

Corrective Actions

TITLE/SUBJECT

1. **Purpose.** This Directive provides notice and information to employees about the guidelines used by the agency in proposing and processing corrective actions. Included as a guide is the Table of Penalties, which lists certain typical offenses and penalty ranges for first and subsequent infractions.
2. **Cancellation.** This Directive cancels GPO Directive 655.4B, Subject: Corrective Actions, dated December 5, 2008.
3. **Scope.** This Directive applies to all GPO employees. "Employee" has the same meaning as that contained in 5 U.S.C. § 7501 and § 7511 - all permanent GPO employees who have completed a probationary period and employees who have completed 1 year of current continuous service. Temporary employees, individuals serving in a probationary period, and individuals serving in a trial period under an initial appointment are not covered by this Directive.
4. **Reference.** 5 U.S.C. Chap. 75; 5 C.F.R. Part 752; 44 U.S.C. § 301. In instances where there is a conflict between a collective bargaining agreement and this Directive, the collective bargaining agreement will govern.
5. **Discipline at GPO.** Supervisors may take corrective actions deemed necessary to promote the efficiency of the Federal service. It is the policy of the GPO that discipline for misconduct be constructive, progressive, and consistent within the agency. Corrective actions will be commensurate with the employee's misconduct.

GPO aims to ensure due process for all covered employees. Discipline must be reasonable, taken for just cause, and not arbitrary or capricious. The object is not to punish, but to correct misconduct and to deter future offenses. Supervisors should choose the appropriate penalty that can reasonably be expected to achieve these objectives. However, depending on individual circumstances, certain conduct may warrant serious penalties, to include removal, even for a first offense.

6. **Definitions.**
 - a. Adverse Action – a suspension, a reduction in pay or grade (demotion), or a removal of an employee based on employee misconduct.
 - b. Non-Disciplinary Removal – a removal action based on an employee's medical inability to perform the duties of his/her position, not based on conduct. In these instances, a GPO

ORIGINATING OFFICE	EFFECTIVE DATE
Labor Relations	May 17, 2017

Form 2021 will not be used, the procedural requirements in Section 12 will be used, but Douglas Factors are not applicable.

- c. Conduct – specific employee behavior.
 - d. Corrective Action – any action taken attempting to correct employee misconduct. Includes counseling, verbal warning, letter of warning, and all adverse actions.
 - e. Electronic Official Personnel Folder (eOPF) – Personnel records that document an individual's Federal career are placed in a single personnel folder or eOPF.
 - f. Formal Corrective Action – disciplinary measures that are documented in an employee's OPF. Formal corrective actions include letters of warning, suspensions, reductions in grade or pay, and removals.
 - g. Informal Corrective Action – disciplinary measures that are not documented in an employee's Electronic Official Personnel Folder (eOPF). Informal corrective actions include verbal counseling, verbal counseling reduced to writing, and verbal warnings.
 - h. Long Suspension – suspension from duties and pay for more than 14 days.
 - i. Short Suspension – suspension from duties and pay for 14 days or less.
7. **Employee Responsibilities.** An employee's conduct and performance on the job directly affects the accomplishment of official duties and responsibilities. Employees are responsible for:
- a. Conducting themselves in a manner that will ensure that their activities do not reflect poorly on or discredit the Federal Government and/or the GPO.
 - b. Complying with all applicable laws, policies, and GPO directives.
 - c. Maintaining a level of behavior that will promote the efficiency of the Federal service.
8. **Supervisory Responsibilities.** Supervisors bear the primary responsibility for assessing the adequacy of their employees' conduct and performance and, as necessary, initiating appropriate corrective action. Supervisors are responsible for:
- a. Assuring that employees under their supervision are aware of laws, policies, and GPO Directives they are expected to observe.
 - b. Applying the agency's corrective action program to employees under their supervision.
 - c. Providing information on corrective actions at GPO to their subordinates, as appropriate.
 - d. Avoiding illegal discrimination when instituting corrective actions and in the application of corrective action procedures.
 - e. Contacting Human Capital-Employee Relations (HC-ER) for advice and assistance in corrective action cases, as necessary. HC-ER should serve as an advisor to GPO management.

9. Informal Corrective Actions.

- a. Informal corrective actions shall be considered when a supervisor determines that corrective action is warranted. These include counseling, verbal warnings, and counseling and verbal warnings reduced to writing.
- b. When taking informal corrective actions, supervisors shall advise employees of their specific misconduct, and document the counseling or verbal warning, including the infraction and date, on GPO Form 2614 (formerly the 7-B card).
- c. Though HC-ER does not process informal corrective actions, supervisors are encouraged to consult with and/or seek the advice of HC-ER when taking an informal corrective action.

10. Formal Corrective Actions.

- a. When formal corrective action is appropriate, a supervisor should consider one of the actions listed below (Section 10c).
- b. Formal corrective actions are processed by HC-ER and a record of the action is placed in the employee's eOPF. Note: For all formal corrective actions, a supervisor must submit a GPO Form 2021 to HC-ER and work with an HC Specialist to process the action. When GPO issues a Form 2021 concerning a corrective action for employees in a bargaining unit, the union president or his designee will be informed by HC-ER.
- c. The following are formal corrective actions that a supervisor may consider, consistent with applicable laws and regulations:
 - (1) Letter of Warning (LOW) – Written notice to an employee that his/her misconduct is of a serious nature and cannot be tolerated. The letter will be filed in an employee's eOPF for a period of not more than 2 years, or for a shorter period as determined by the supervisor based on the conduct of the employee following issuance of the LOW. A LOW can be removed from the employee's eOPF at any time by the issuing supervisor or a supervisor in the line of supervision, but it should be a rare occurrence for a LOW to be removed before 1 year. LOWs may be issued by any level of supervision at the PG-13 or equivalent and above.
 - (2) Suspension – Places an employee, for disciplinary reasons, in a temporary status without duties and pay. A suspension may be for any number of days depending upon the infraction.
 - (3) Reduction in Grade or Pay – A “reduction in pay” refers to basic pay, and not a change which results in loss of a night differential from a change in shift.
 - (4) Removal – Termination of employment.

- 11. Time Limitations.** Records of violation for which a letter of warning was issued will be maintained for a period not to exceed 2 years from the date of issuance. Records of violations which resulted in verbal warnings will be removed from GPO Form 2614 and other files 2 years after the date of the warning. After these records of offenses have been destroyed, such

offenses will not be considered in determining a penalty for a later infraction.

- 12. Procedural Requirements for Adverse Actions.** This section is intended to familiarize supervisors and employees with the general procedural requirements associated with taking an adverse action. Supervisors should consult with the HC-ER for guidance about processing specific adverse actions.
- a. **Notice** – Employees must be given advanced written notice of a proposed adverse action. This letter, referred to as the proposal letter, must identify the specific charges, the details of the misconduct, and the proposed penalty. The proposal must contain sufficient detail to allow the employee to respond to the proposed action. Proposals may be issued by any level of supervision at GPO, regardless of grade.
 - b. **Reply** – The employee is normally given 10 calendar days from receipt of the proposal letter in which to reply to the proposed action. An extension of at least 5 calendar days may be granted by HC-ER upon receipt of a written request. Extension requests must be received within a reasonable period of time. The employee may reply orally or in writing, or both. The employee’s reply will be considered along with the facts of the case in making a decision on what penalty, if any, should be imposed.
 - c. **Decision** – Employees must be issued a decision in writing stating the action to be taken and the reasons for the action. The decision letter will be issued within a reasonable period of time after application and consideration of the Douglas Factors (see Appendix A). Employees must also be provided with information on their appeal rights.
 - d. **Representation** – Employees are entitled to be represented by an attorney or other representative during the process, so long as the attorney or representative does not present a conflict of interest.
- 13. Charge Selection.** Supervisors are responsible for *recommending* specific charges when submitting a GPO Form 2021 to HC-ER. The language used in the 2021 should be given careful consideration, but it does not limit the charges which may be included in the proposal letter. Supervisors should consult with HC-ER for assistance in analyzing the existing evidence, considering all possible charges, and using plain language that specifically describes the employee’s misconduct.
- 14. Appeal Rights.** Appeal rights vary depending on the action taken. Verbal warnings, letters of warning, or suspensions of 14 days or less may be appealed under the negotiated grievance procedures or the agency administrative grievance procedure, found in GPO Instruction 680.1B, as applicable. Suspensions of more than 14 days, reductions in grade, and removals may be appealed under the procedures in Appendix D.
- If an employee believes a corrective action was motivated by illegal discrimination, they may elect to file a complaint of discrimination with the agency’s Office of Equal Employment Opportunity, or to file a grievance, but not both.
- 15. Table of Penalties.** The Table is intended as a guide in determining the most appropriate charges and penalties for corrective actions and to help ensure consistency of penalties for like

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offenses within the agency. The Table of Penalties must be used in conjunction with the Douglas Factors, listed in Appendix A, when applicable. The Table is not all-inclusive and is not intended to cover every possible offense. The penalty for a given offense, when circumstances warrant, may be less than the minimum penalty shown, or greater than the maximum penalty shown on the Table. However, for these rare instances, a written justification shall be submitted to HC-ER by the proposing and/or deciding official, as applicable.

Corrective actions should be administered in a timely, constructive, and progressive manner. Counseling an employee regarding problematic behavior shall be given when appropriate and can be done at any time.

Table of Penalties

Infraction	First Offense	Second Offense	Subsequent Offenses	Notes
Attendance				
Absence without leave (AWOL)/ unauthorized absence from duty; Any absence from the scheduled tour of duty or from management directed additional hours of duty which has not been authorized (Unauthorized Absence). For the purposes of this Directive, an 'offense' accrues for any absence of a whole or portion of a workday.	Letter of Warning- Short Suspension	Short Suspension - Long Suspension	Long Suspension - Removal	
Leaving job assignment or work area, during working hours, without proper permission.	Letter of warning — Short Suspension	Short Suspension— Long Suspension	Long Suspension — Removal	
Failure to follow established leave procedures.	Verbal Warning – Letter of Warning	Letter of Warning - Short Suspension	Short Suspension- Removal	
Obtaining or requesting leave under false pretense, or falsifying attendance record for self or another employee.	Letter of Warning – Long Suspension	Short Suspension – Removal	Removal	
Excessive Absence.	Verbal Warning – Removal			
Attention to Duty				
Insubordination.	Letter of Warning - Removal	Short Suspension – Removal	Long Suspension - Removal	Note 3
Sleeping on duty.	Letter of Warning- Removal	Short Suspension- Removal	Long Suspension- Removal	
Delay in carrying out orders, work assignments, failure to work on assignments.	Verbal Warning – Removal	Letter of Warning - Removal	Short Suspension- Removal	
Failure to follow Supervisory Instructions.	Verbal Warning – Removal	Letter of Warning - Removal	Short Suspension- Removal	
Failure to follow applicable rules, laws, regulations or policies in the performance of duties.	Verbal Warning – Removal	Letter of Warning - Removal	Short Suspension- Removal	
Failure to observe and/or enforce safety and health rules, regulations, and instructions, or to perform duties in a safe manner.	Verbal Warning – Short Suspension	Short Suspension - Long Suspension	Long Suspension- Removal	
Conduct Unbecoming; Improper Conduct; Dishonest, Unacceptable or Unprofessional Conduct.	Verbal Warning – Removal	Letter of Warning - Removal	Short Suspension- Removal	
Failure to report accident or injury when there is an obligation to report.	Letter of Warning- Short Suspension	Short Suspension- Long Suspension	Removal	
Disruptive Behavior				

Unprofessional or discourteous conduct toward supervisors, co-workers, or the public; Abusive, offensive, indecent, disgraceful, disrespectful, insolent, or inflammatory language or gestures; Angry outbursts; inappropriate remarks.	Verbal Warning- Short Suspension	Short Suspension - Long Suspension	Long Suspension- Removal	
Creating a disturbance.	Letter of Warning- Short Suspension	Short Suspension- Long Suspension	Removal	Note 4
Fighting, attempting to inflict, or inflicting bodily harm to another.	Long Suspension- Removal	Removal	---	
Threatening bodily harm, intimidating or other disruptive behavior toward a supervisor or co-worker or conduct creating a hostile work environment.	Short Suspension- Removal	Removal	---	Note 4a
Conduct creating a safety issue. Careless or Negligent Performance of Duties (lack of due care).	Short Suspension- Removal	Removal	---	
Smoking in unauthorized locations.	Short suspension- Removal	Removal		
Drugs and Alcohol - Intoxicants				
Violation of GPO's Alcohol-free and/or Drug-free workplace programs.	Letter of Warning - Removal	Short Suspension- Removal	Removal	
Reporting to or being on duty while under the influence of drugs, alcohol or controlled substances.	Letter of Warning - Removal	Short Suspension- Removal	Removal	
Use of an illegal drug or misuse of a controlled substance.	Short Suspension- Removal	Long Suspension- Removal	Removal	
Unauthorized possession, use, sale or transfer of drugs or controlled substances while on Government premises or in a duty status.	Removal			
Operating a Government owned or leased vehicle, on or off duty, or a privately owned vehicle, on duty, while under the influence of drugs and/or alcohol.	Short Suspension - Removal	Removal	---	
Failure to submit to or interfering with an authorized drug or alcohol test.	Letter of Warning - Removal	Short Suspension- Removal	Removal	Note 5
Fiscal Irregularities				
Misappropriation of funds.	Removal	---	---	
Unauthorized use of government travel or purchase card for other than official purposes.	Letter or Warning- Removal	Long Suspension- Removal	Removal	
Misuse of GPO Transit Benefit or Parking programs, violation of GPO Transit Benefit or Parking Directive.	Verbal Warning - Removal	Short suspension- Removal	Short Suspension- Removal	

Submission of (or causing/allowing the submission of) false time logs, WebTA entries, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal documents.	Letter of Warning- Removal	Removal		
Inappropriate Use of Weapons				
Failure to report the discharge of a firearm or use of a weapon as required by the applicable firearms policy.	Letter of Warning- Removal	Short Suspension- Removal	Removal	
Inappropriate storage, care, loss, or misplacement of a weapon or ammunition	Letter of Warning- Removal	Short Suspension- Removal	Removal	
Unauthorized or illegal possession of a weapon.	Removal			
Unnecessary discharge of a weapon creating a possible danger to human life.	Removal	---	---	Note 6
Unnecessary discharge of a weapon which does not endanger human life.	Short Suspension- Removal	Long Suspension - Removal	Removal	Note 6
Misuse of Property				
Unauthorized use of government property, property under government custody, for other than official purposes.	Letter of Warning - Long Suspension	Short Suspension - Removal	Removal	
Unauthorized use of law enforcement equipment, resources, and/or the use of excessive force.	Letter of Warning - Removal	Short Suspension - Removal	Removal	
Damage or loss of government-owned or government-leased property.	Letter of Warning - Removal	Long Suspension- Removal	Removal	
Intentional misuse of (or authorizing the use of) any government owned or leased vehicle.	30-day suspension - Removal	Removal	---	Note 1
Technology & Security				
Misuse of the Internet in violation of GPO Policy; other inappropriate use, such as blogging, during duty time for non- official purposes.	Letter of Warning- Removal	Letter of Warning - Removal	Short Suspension- Removal	Note 7
Using the Internet, GPO computer systems, GPO issued electronic devices to access, view, possess or distribute sexually oriented or explicit material.	Short suspension- Removal	Long suspension- removal	Removal	
Violating or ignoring security regulations and/or practices.	Letter of Warning- Removal	Short Suspension- Removal	Removal	Note 8
Misuse of government communication systems and equipment for other than official purposes.	Verbal Warning- Short Suspension	Letter of Warning- Long Suspension	Long Suspension- Removal	Note 9
Misuse of identification cards, investigative or identification credentials.	Short Suspension- Removal	Long Suspension- Removal	Removal	
Unauthorized disclosure of material classified or sensitive to the government.	Short Suspension - Removal	Long Suspension - Removal	Removal	Note 2
Theft				
Actual or attempted taking of an item or receipt	Short Suspension -	Removal	---	

of services not belonging to the employee or not authorized for the employee's use.	Removal			
Unethical Conduct				
Prohibited personnel practice in any aspect of employment or application for employment.	Short Suspension – Removal	Long Suspension – Removal	Removal	Appendix B
Violation of Merit Systems Principles.	Short Suspension – Removal	Long Suspension – Removal	Removal	
Soliciting a bribe, Accepting a bribe or participating in related activities.	Letter of Warning-Removal	Long Suspension-Removal	Removal	Note 10
Misrepresentation or providing false information on employment applications, personal history records, official government records, government business, inquiry, or investigation, either by omission or by making false entry.	Short Suspension – Removal	Long Suspension – Removal	Removal	Note 11
Use of position or authority for other than official purposes.	Letter of Warning - Removal	Long Suspension-Removal	Removal	
Violations of ethics regulations, statutes applicable to Federal employees or GPO directives.	Letter of Warning - Removal	Short Suspension-Removal	Removal	
Conducting personal affairs while in duty status	Verbal Warning – Short Suspension	Letter of Warning - Long Suspension	Short Suspension-Removal	
Failure to provide accurate or complete information/Lack of Candor: Statements less than candid, truthful, accurate, or complete, involving deception, (knowingly made or withheld).	Short Suspension – Removal	Long Suspension - Removal	Removal	Note 12
Participating in unauthorized gambling activity on government premises or in a duty status.	Verbal Warning – Letter of Warning	Letter of Warning - Short Suspension	Short Suspension-Removal	
Operating, assisting, or promoting unauthorized gambling activity on government premises or in a duty status or while others are in a duty status.	Short Suspension – Removal	Long Suspension-Removal	Removal	
Other				
Any reprisal or retaliatory action against an individual involved in the EEO complaint process, Whistleblowing, or any other protected activity.	Short Suspension – Removal	Long Suspension – Removal	Removal	
Participating in or promoting a strike, work stoppage, slow down, sick out, or other prohibited job action.	Removal	---	---	
Refusing, interfering with, or failing to cooperate in an official investigation or inquiry.	Short Suspension-Removal	Long Suspension - Removal	Removal	
Misconduct of a sexual nature including, but	Short Suspension	Long Suspension	Removal	Note 13

not limited to, unwelcome sexual remarks, offensive jokes, offensive sexual banter, offensive gestures or actions, unwelcome physical touching, unwanted sexual advances.	– Removal	Removal		
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Notes:

1. Reference 31 U.S.C. § 1349 mandates that an employee who willfully uses or authorizes the use of a government owned or leased passenger motor vehicle for other than official purposes shall be suspended from duty and pay for a minimum of 1 month.
2. Reference 18 U.S.C. § 1030 (includes improper disclosure of information from Grand Jury, Title III, and computerized systems to include appeal/complaint proceedings). This does not apply to protected disclosures to the U.S. Office of Special Counsel.
3. Insubordination implies willful and intentional refusal to obey a proper order.
4. A charge of creating a disturbance implies that the employee caused a work stoppage or adversely affected other employees' ability to do/continue to do their work.
- 4a. In *Metz v. Department of the Treasury*, 780 F.2d 1001 (Fed. Cir. 1986), the Federal Circuit ruled that, in order to determine if the words constitute a threat, the Merit Systems Protection Board (MSPB) must use the connotation that a reasonable person would give to the words. The Court also listed the factors to consider in making a determination of a threat: 1) listener's reactions; 2) listener's apprehension of harm; 3) speaker's intent; 4) conditional nature of the statements; and 5) attendant circumstances.
5. Includes substituting or otherwise tampering with a urine sample.
6. In selecting the appropriate penalty, consideration will be given to, among other factors, whether or not the discharge of the weapon was intentional or unintentional.
7. In selecting the appropriate penalty, consideration will be given to, among other factors, the nature of the material downloaded, the amount and content of unauthorized e-mails, the amount and content of websites visited, and/or the effect the employee's actions had on the performance of their duties.
8. In selecting the appropriate penalty, consideration will be given to, among other factors, whether or not the security breach was intentional and whether or not sensitive information was compromised.
9. Telephone, facsimile machine, pager, e-mail, internet, cellular phone, personal digital assistant (PDA), video camera, tape recorder, or other commercial information systems paid for by the government.
10. "Bribe" includes anything of value, loans, or personal gain to the employee or the employee's family, which an employee agrees to or actually accepts or solicits based on performing or failing to perform any official act or duties.
11. If the misrepresentation/false entry or omission would have impacted the hiring decision, the penalty will be removal.
12. Includes committing perjury, providing false testimony, and knowingly making a false statement or accusations. For employees in positions with potential to testify in court, this violation jeopardizes their ability to serve as Federal witnesses.
13. In selecting a penalty, appropriate consideration should be given to several factors, such as supervisor/subordinate status, and intent. There may be some cases where the conduct at issue was clearly unintentional, although still inappropriate. In those cases, managers may wish to consider a penalty at the lower end of the range and

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mandatory training, as appropriate. See 29 C.F.R. § 1604.11(a) for a detailed definition of sexual harassment.

16. **Inquiries.** Office of the Chief Human Capital Officer, Policy and Employee Relations; 202-512-0097.



DAVITA VANCE-COOKS
Director
Government Publishing Office

Appendix A: The Douglas Factors

The Merit Systems Protection Board (“MSPB” or “Board”), in its landmark decision, Curtis Douglas vs. Veterans Administration, 5 MSPR 280 (1981), established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. In Douglas, the Board made a distinction between the determination as to whether any action should be taken from the determination of what is the appropriate penalty. To support taking any action, there must be an adequate relationship, or “nexus,” between the misconduct and the efficiency of the service. To determine the appropriate penalty, MSPB concluded that an agency must consider twelve relevant factors, both mitigating and aggravating, to the extent that the factors are applicable in individual cases. These twelve factors, listed below, are commonly referred to as “Douglas Factors.”

1. The nature and seriousness of the offense, and its relation to the employee’s duties, position, or responsibilities, including whether the offense was intentional, technically inadvertent, committed maliciously or for gain, and was frequently repeated;
2. The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee’s past disciplinary record;
4. The employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisors’ confidence in the employee’s ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with any applicable agency table of penalties;
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. The potential for the employee’s rehabilitation;
11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Appendix B: Prohibited Personnel Practices

Generally stated, 5 U.S.C. § 2302(b) provides that a Federal employee authorized to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority -

- (1) discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
- (2) solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
- (3) coerce the political activity of any person;
- (4) deceive or willfully obstruct anyone from competing for employment;
- (5) influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
- (6) give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
- (7) engage in nepotism (i.e., hire, promote, or advocate the hiring or promotion of relatives);
- (8) engage in reprisal for whistleblowing – i.e., take, fail to take, or threaten to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety (if such disclosure is not barred by law and such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs – if so restricted by law or Executive Order, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official);
- (9) take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;
- (10) discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others; or
- (11) knowingly take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and
- (12) take or fail to take a personnel action, if taking or failing to take action would violate any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301;
- (13) implement or enforce a nondisclosure agreement or policy lacking notification of whistleblower rights

Appendix C: Recommendation for Corrective Action, GPO Form 2021

Instructions: A GPO Form 2021 is an administrative form used to initiate formal corrective actions. It is not a notice of proposed action. It is not a decision to take an action. Employees who are presented with a GPO Form 2021 for signature do not have a right at that time to review any evidence or supporting documentation.

Completing GPO Form 2021: In order to initiate a formal corrective action - letter of warning, suspension, demotion, or removal - the supervisor must complete and submit a GPO Form 2021, in accordance with the following instructions. Recommendations should always be made as soon as possible after an incident or violation of rules has occurred.

Step	Action
1	<p>If the employee is available, the supervisor should meet with him/her to obtain his/her version of events.</p> <p><i>Bargaining unit employees have the right to request to have a representative at this meeting. If representation is requested, the meeting must be delayed for a reasonable amount of time to allow a representative to attend. It is not the supervisor's responsibility to bring a union representative to the meeting; however employees must be informed of their right to representation. Non-bargaining unit employees do not have a right to representation.</i></p>
2	<p>Make sure the employee's name, title, section, and shift are entered accurately.</p>
3	<p>Specify a recommended infraction and penalty.</p>
4	<p>Forward the Form 2021 to the next level of management for concurrence.</p>
5	<p>Once the form is complete with the supervisor's and concurring official's signatures, the form should be presented to the employee for signature, if possible. If the employee refuses to sign, make note on the form and have a witness sign attesting to the employee's refusal to sign.</p> <p><i>Bargaining unit employees have the same right to representation as described in step 1.</i></p>
6	<p>Attach complete documentation that clearly supports the recommended action. Include witness statements, exact details, and the impact of the infraction. The documentation should fully explain the reasons for the recommended action.</p>
7	<p>Forward the completed form with all supporting documentation to Human Capital Operations for processing.</p>

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GPO Form 2021: Recommendation for Corrective Action

Read GPO Directive 655.4C: Corrective Actions, Appendix D, prior to completing this form. The employee may attach a statement regarding the recommended action.

Employee Information

Employee's Full Name Payroll Number

Job Title Division/Section/Shift

Recommended Action

Please list the action recommended and attach detailed supporting documentation:

Supervisor Information

Supervisor's Name & Title Phone Number

Signature Date

Concurrence

Concurring Official's Name & Title Phone Number

Signature Date

Right to Representation

I was informed of my right to have a representative during the presentation of this form.

Yes No Not Applicable

Employee Signature

Employee's Signature Date

Supervisor's initials (employee refused to sign) Witness name and initials

Supervisor's initials (employee unavailable to sign)

Appendix D: Information Regarding Grievance Rights

Your rights to file a grievance contesting disciplinary action depend on the action taken and your bargaining unit status as follows:

1. Letters of Warning and Suspensions of 14 Days or Less
 - a. Non-bargaining unit employees may file a grievance pursuant to the administrative grievance procedure, GPO Instruction 680.1B, Subject: Agency Administrative Grievance Systems (AAGS). Employees must present a grievance under these formal procedures within ten (10) working days of receipt of the letter of warning or suspension. Information concerning a grievance under the AAGS can be obtained from Human Capital Operations, Room A-638, or by calling 202-512-1308.
 - b. Bargaining unit employees may file a grievance pursuant to the negotiated grievance procedure. Grievances must be filed within the time limits specified in the applicable negotiated grievance procedure in the Labor-Management Agreement (LMA) or Memorandum of Understanding (MOU) with the GPO. Information concerning a grievance under the negotiated grievance procedure can be obtained from your respective union representative, or the Labor Relations Office, in Room C-604, or by calling 202-512-0198.
2. Suspensions of More than 14 Days, Removals, and Reductions in Pay or Grade. A bargaining unit employee whose adverse action is covered by 5 U.S.C. § 7512 (those listed above) is entitled to file a grievance through the negotiated grievance procedure or an appeal to the Merit Systems Protection Board (MSPB) under 5 U.S.C. § 7701, but may not do both. Non-bargaining unit employees may file a grievance under the agency administrative grievance procedure or an appeal to the MSPB, but may not do both. Generally, an MSPB appeal must be filed within 30 calendar days of the effective date of the action or receipt of the Agency's decision, whichever is later.
3. EEO Complaint Process for Allegations of Discrimination. If an employee believes that an action is taken against them based on race, color, religion, a qualified disability, sex, national origin, or age, they may file a complaint with GPO's Office of Equal Employment Opportunity (EEO) within 45 days of the effective date of the personnel action. Employees may contact the EEO Counseling and Complaints Processing Office at 202-512-0031.
 - a. If you are a bargaining unit employee, you have the right to allege discrimination through the negotiated grievance procedures. However, you cannot then file an appeal with the MSPB or a complaint with EEO. You may only file in one forum.
 - b. If you are a non-bargaining unit employee, you may file a discrimination complaint with the EEO Office or, if the adverse action is covered by 5 U.S.C. § 7512, you may file an appeal with the MSPB in which you allege discrimination. However, you cannot file both an EEO complaint and an appeal with MSPB.