

December 2024

MEMORANDUM FOR THE NATIONAL MUSEUM AND LIBRARY SERVICES BOARD

FROM: Office of General Counsel Ethics Officials

SUBJECT: Annual Ethics Briefing

A key element of the federal government's ethics program is an annual ethics briefing to ensure that all employees are aware of the various rules that form the standards of ethical and appropriate conduct for employees in the executive branch. This written briefing is provided to fulfill this annual requirement – it highlights some of the key rules and issues likely to arise and identifies situations where the IMLS can be of assistance or should be consulted. It should not be regarded as a substitute for consulting with the agency's official ethics advisors when a particular question arises. Please read this memo and keep it on file for future reference.

I. EXECUTIVE BRANCH STANDARDS OF ETHICAL CONDUCT

Executive Order 12674 (1989), as amended at 81 FR 81641 (effective January 1, 2017), sets forth a list of general principles that broadly define the obligations of public service. Underlying these principles are two core concepts:

- employees shall not use public office for private gain, and
- employees shall act impartially and not give preferential treatment to any private organization or individual.

Government ethics rules that ensure compliance with these concepts usually fall into several broad categories. A discussion of each of these categories follows. As “special government employees,” Board Members are subject to these rules.

A. Conflicts of Interest

Board Members are prohibited from participating personally and substantially in an official capacity in matters in which they have a financial interest recognized by federal ethics rules. For purposes of this provision, this includes the financial interests of: (1) the employee, (2) an employee's spouse or minor child, (3) a general partner of the employee, (4) an organization in which the employee serves as an officer, director, trustee, general partner or employee, and (5) a person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

To a large degree, compliance with this rule is accomplished through the financial disclosure review process, in which agency ethics officials review assets reported by employees who file the Form 450 (Confidential Financial Disclosure Report) and advise employees who may have a potential conflict of interest. To ensure full compliance, however, Board Members should exercise care to ensure that conflicts do not develop before being addressed in the Institute's financial review process.

A Board Member who suspects there may be a new conflict for any reason (i.e., acquisition of new assets or income, a new job duty that may conflict with a present financial interest, or applying for a new job), should seek advice from the ethics officer as soon as possible.

When a conflict arises, various remedies may be applied to resolve the situation. A Board Member may refrain from participating in the conflicting matter. A Board Member may also, if appropriate, obtain a waiver from the agency, sell off (“divest”) the conflicting interest, or seek reassignment or resign from the conflicting position. The remedy to be applied or elected will depend upon the particular circumstances of each case.

In addition to the Federal laws and regulations, Board Members must be alert to avoid any actions that could be interpreted as a use of Board membership to further their own private interests. The following illustrations should be kept in mind:

- i. A Board Member should not submit an application for the Institute’s funds on behalf of himself or an institution that employs him or with which he is affiliated.
- ii. A Board Member may take part in IMLS projects but not receive any remuneration out of IMLS grant funds for his services. If a Board Member is a participant in any way, a proposal should clearly indicate the nature of his participation in the project.
- iii. A Board Member should not participate in any way in support of an application for IMLS funds on behalf of an institution which employs him or with which he is affiliated.
- iv. During a Board meeting, a Member should leave the room if any discussion arises regarding a project in which he has a conflict of interest. If no discussion ensues and the motion or discussion of a given project is pro forma, that member may remain in the room.

These rules apply to Board Members for one year following termination of their services on the Board.

B. Impartiality in Performing Official Duties

A Board Member should not participate in matters in which he has a “covered relationship.” A “covered relationship” is one with present or intended business associates, household members and close friends, an organization in which the Board Member is an active participant, and persons (or organizations) for whom the Board Member or spouse, parent, or dependent child is an officer, director, trustee, general partner, agency, attorney, consultant, contractor, or employee.

C. Misuse of Position

As government employees, Board Members must not use their positions for private gain. They may not use their positions, titles, or any other authority associated with their offices to coerce or induce a benefit for themselves or others; nor may they use or allow the use of non-public information to further any private interest.

Under applicable criminal laws, Board Members cannot seek, accept, or agree to receive anything of value in return for being influenced in the performance or nonperformance of official acts.

D. Representation to Government Agencies and Courts

Generally, Board Members are prohibited by criminal statutes from representing private interests before the government, whether or not compensation is provided. Key exceptions include self-representation, representation of the employee's parent, spouse or child, and representation of a person or estate for which the employee serves as guardian, executor, administrator, trustee, or personal fiduciary. In all such circumstances, the employee should consult the agency's ethics officials to obtain information on obtaining approval. Board Members should be aware of the following statutory prohibitions:

- i. A Board Member cannot seek or receive compensation from a non-Government source for any representational services related to any particular matter involving specific persons to which the United States is a party and in which the Board Member participated personally and substantially as a Government employee.

EXAMPLE: If a museum were to enlist a Board Member as a consultant, the Board Member could not request on the museum's behalf that the IMLS change an IMLS Board action affecting the museum.

- ii. A Board Member cannot represent a non-Government party, with or without compensation, before any Federal agency or other entity on any particular matter in which the United States is a party or has a direct and substantial interest, and in which the Board Member participated personally and substantially as a Government employee.

EXAMPLE: This type of situation could arise after a Board Member has voted on an award. The Board Member may not make a request for additional financial benefits on behalf of the museum, whether or not the Board Member would expect to receive pay from the museum in exchange for the request.

E. Compensation for Related Outside Teaching, Speaking, and Writing

A Board Member cannot receive compensation for outside teaching, speaking, or writing that "relates to the employee's official duties." The "relatedness test" is whether:

- i. The Board Member undertakes the activity as an official Government duty;
- ii. The circumstances indicate that the invitation to engage in the activity was extended primarily because of the Board Member's official position rather than the Board Member's own expertise on a particular subject;
- iii. The invitation to engage in the activity or offer of compensation was extended to the Board Member, directly or indirectly, by a person who has interests that may be affected substantially by the performance or nonperformance of the employee's official duties;
- iv. The information conveyed through the activity draws substantially on ideas or official data that are deemed non-public information; or
- v. The subject of the activity deals in significant part with any matter the Board Member is presently assigned or was assigned during the previous one-year period.

F. Fundraising

A Board Member may engage in fundraising in a personal capacity as long as the Board Member does not personally solicit funds or other support from anyone known to the Board Member to be a person whose interests may be substantially affected by the performance or nonperformance of the Board Member's official duties. A Board Member also may not use or permit the use of his official title, position, or any authority associated with public office to further the fundraising effort.

EXAMPLE: A Board Member, acting in her personal capacity, generally may support an organization's fundraising efforts by soliciting funds or support from the local community, but the Board Member may not use or permit the use of her official title as a Board Member in any such solicitation.

The IMLS Director has the authority to engage in official fundraising on behalf of the agency. The Director may coordinate such efforts with Board Members. In such circumstances, Board Members should consult with the Director's Staff and the General Counsel to determine the exact scope of the Board Member's role.

G. Hatch Act

The Hatch Act, which limits the political activities of Federal civilian employees, applies to you only while you are conducting Government business. Broadly, the Hatch Act prohibits federal employees, including Special Government Employees, from engaging in partisan political activities:

- i. While on official duty;
- ii. In any room or building in which Federal employees or officers perform official work; or
- iii. While wearing a uniform or official insignia.

H. Post-Employment Restrictions

Executive branch employees are subject to certain restrictions on their activities after they leave government service. Two general restrictions apply with respect to particular matters involving specific parties with which an employee was involved while in government service. If the ex-employee's involvement in such a matter was personal and substantial, then he is permanently barred from representing anyone to any federal department, agency, or court on that same matter. If the matter was under the ex-employee's official responsibility during the last year of government service, then the employee is barred for two years after leaving government service from representing anyone to the government on the same matter.

H. Gifts From Outside Sources

Executive branch employees may not solicit or accept a gift: (1) from a "prohibited source" or (2) if given because of your official position.

A "prohibited source" is a person or organization seeking official action by IMLS; a contractor or grantee of IMLS; a person or organization with an interest that may be substantially affected by the performance or nonperformance of your official duties; or an organization whose members are any of the above.

There are a number of exceptions to this rule that may permit acceptance of an otherwise prohibited gift. The most common exceptions are:

- Individual gifts of \$20 or less per source per occasion, provided that the aggregate market value of the individual gifts received from any one source does not exceed \$50 per year.
- Gifts based on outside business or employment relationships, from a personal friend, or to your spouse unaffected by your official position.
- Invitations to certain widely attended events (events where a large number of people with common interests, but diverse perspectives are expected to attend), provided you have written approval from an IMLS ethics counselor.

Executive branch employees should never: (1) accept a gift in return for being influenced in the performance of an official act; (2) solicit or coerce the offer of a gift; (3) accept gifts from the same or different sources so frequently that a reasonable person would believe you are using your public office for private gain; or (4) accept a gift in violation of any statute.

Whether you may accept or attend depends on whether the gift falls into one of the exceptions, including those described above.

II. APPLICATION: BOARD CORRESPONDENCE AND CONTACT WITH APPLICANTS

From time to time, Board Members may be approached by applicants for grant funds who want to discuss their organizations or applications. In such situations, Board Members must take care not to discuss a pending application, a grant award, a grant amendment, or a request for reconsideration of a rejected application with an applicant. Such contacts give rise to a conflict of interest or an appearance of a conflict, implicate the prohibitions against representation of outside parties, and challenge the Board Member's ability to make impartial recommendations. Moreover, Board recommendations must be based on information equally available to all Board Members, not just to one. For these reasons, Board Members also should not contact applicants to seek additional information about their applications. If a Board Member has a question about an application, the Board Member should contact an IMLS staff member for assistance.

Similarly, a disappointed applicant may try to contact a Board Member to discuss the reasons for not receiving funding. Our peer review process and panel deliberations are confidential and should not be discussed with outside entities. IMLS provides unsuccessful applicants with statements summarizing the reasons for denying funds. These statements represent the final decisions of the Director. Accordingly, should any disappointed applicant – or any other individual seeking your intervention in a dispute with the IMLS – contact you, inform him or her that contacts with a Board Member concerning an application are inappropriate. Most applicants will not realize that such contacts are a problem and will need you to tell them.

III. ADDITIONAL GUIDANCE

IMLS ethics officials can provide you with additional information and advice regarding all matters covered in this memo, and respond to any questions on your ethical responsibilities as a Board Member. Please visit us in person or contact our office at (202) 653-4653 for assistance.