

Directive on Conflict of Interest

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Directive on Conflict of Interest

1. Effective date

- 1.1 This directive takes effect on April 1, 2020.
- 1.2 This directive replaces Appendix B of the *Policy on Conflict of Interest and Post-Employment* (April 2, 2012).
- 1.3 Blind trust agreements established under the *Policy on Conflict of Interest and Post-Employment* (April 2, 2012) and the *Values and Ethics Code* for the Public Service (September 1, 2003) will remain valid when this directive takes effect; however, deputy heads will assume the roles and responsibilities for cost reimbursement where applicable, oversight of activities, and maintenance of records.

2. Authorities

- 2.1 This directive is issued pursuant to the same authorities indicated in section 2 of the *Policy on People Management*.

3. Objectives and expected results

- 3.1 In addition to the objectives in section 3 of the *Policy on People Management*, the objective of this directive is to minimize the risks associated with conflict of interest and conflict of duties situations to enable persons employed to uphold the values and ethics of the public sector and the public interest.
- 3.2 The expected results of this directive are as follows:
 - 3.2.1 Organizations have the appropriate mechanisms in place to help individuals identify, report and effectively resolve real, apparent or potential conflict of interest and conflict of duties situations that arise during and after leaving their employment in the public service; and
 - 3.2.2 Persons employed take appropriate action to identify, prevent, report and effectively resolve real, apparent or potential conflicts of interest and conflict of duties situations.

4. Requirements

- 4.1 The senior official designated by the deputy head is responsible for the following:

General requirements

- 4.1.1 Putting in place the infrastructure and controls to effectively administer this directive and to report to the Treasury Board of Canada Secretariat upon request;
- 4.1.2 Ensuring that conflict of interest and conflict of duties risks are identified and resolved;
- 4.1.3 Identifying the types of assets and liabilities that must be reported by persons employed because ownership might constitute a real, apparent or potential conflict of interest;
- 4.1.4 Creating and updating, as required, the list of reportable assets and liabilities as described in subsection 4.1.3;
- 4.1.5 Identifying those positions that may be a risk for post-employment conflicts of interest;
- 4.1.6 Seeking deputy head approval of the positions to be designated as a risk for post-employment conflicts of interest (“designated positions”);

Information, advice and recordkeeping

- 4.1.7 Providing consistent information, advice and assistance to persons employed about:
 - 4.1.7.1 Preventing and resolving conflict of interest situations arising from their assets, liabilities, interests, outside employment and activities, and intended post-employment activities; and
 - 4.1.7.2 Preventing and resolving conflict of duties situations arising from one or more of their concurrent and competing official responsibilities;
- 4.1.8 Ensuring that any actions taken, decisions made, advice given, or information provided to minimize risks associated with conflict of interest or conflict of duties situations are documented;
- 4.1.9 Ensuring that all records relating to conflict of interest and conflict of duties situations are maintained in accordance with the *Privacy Act*;

Informing persons employed

- 4.1.10 Ensuring that persons offered employment and persons employed are informed about:

- 4.1.10.1 This directive, that compliance with this directive is a condition of their employment, and that non-compliance with this directive may result in the consequences outlined in subsection 7.1 of this directive;
- 4.1.10.2 The list of reportable assets and liabilities; and
- 4.1.10.3 Those positions designated for the one-year post-employment period and the applicable limitations;
- 4.1.11 Reminding persons employed who have indicated their intention to leave the public service of the ongoing application of this directive and, if they hold a designated position, of their post-employment limitations;
- 4.1.12 Informing persons employed about decisions taken and reasons for applying measures to mitigate the risk of a real, apparent or potential conflict of interest or a conflict of duties situation;
- 4.1.13 Ensuring that necessary steps are taken to protect the identity of the person employed and protect the information pertaining to their financial mitigation strategy in circumstances where a financial mitigation strategy is used;

Financial mitigation

- 4.1.14 When authorized by the deputy head:
 - 4.1.14.1 Approving the financial mitigation strategies;
 - 4.1.14.2 Reviewing and approving the selection of trustees, managers or agents, including their replacements or additions, before executing a specific financial mitigation strategy; and
 - 4.1.14.3 Reviewing and approving the reimbursement of reasonable administration costs incurred by the person employed as a result of implementing a financial mitigation strategy.

- 4.2 Persons employed are responsible for the following:

General requirements

- 4.2.1 Complying with the requirements in this directive, which is a condition of employment;
- 4.2.2 Identifying, preventing and resolving:
 - 4.2.2.1 Conflict of interest or conflict of duties situations during their employment in the public service; and

- 4.2.2.2 Conflict of interest situations when they leave the public service;
- 4.2.3 Reporting in writing to their deputy head all outside employment and activities, assets, liabilities and interests that might give rise to a real, apparent or potential conflict of interest in relation to their official duties and responsibilities;
- 4.2.4 Reporting in writing to their deputy head when concurrent or competing official responsibilities give rise to a conflict of duties situation;
- 4.2.5 Refraining from having private interests and engaging in outside employment or activities that may subject them to demands incompatible with their official duties, or that could be seen to impair their ability to perform their duties and responsibilities in an objective and impartial manner;
- 4.2.6 Reporting in writing to their deputy head before engaging in non-candidacy political activities that could constitute a conflict of interest or impair their ability to perform their duties and responsibilities in an objective and impartial manner;

Financial mitigation

- 4.2.7 Implementing a financial mitigation strategy where the deputy head determines that any of their reported assets and liabilities would result in a real, apparent or potential conflict of interest in relation to their official duties and responsibilities;
- 4.2.8 Refraining from selling or transferring assets to anyone, including family members, or taking any other measures for the purpose of circumventing the requirements of subsections 4.1.29 and 4.1.30 of the *Policy on People Management* and any other applicable requirements;

Contracts with the Government of Canada, non-public information, preferential treatment and inappropriate influence

- 4.2.9 Seeking the approval of their deputy head before entering into a contractual arrangement with the Government of Canada for which they are receiving any direct or indirect benefit or income;
- 4.2.10 Refraining from knowingly taking advantage of or benefiting from information that is obtained in the course of their official duties and responsibilities and that is not available to the public;
- 4.2.11 Refraining from assisting outside entities or individuals in their dealings with the government where doing so would result in preferential treatment or advantages to the entities or individuals;

- 4.2.12 Refraining from interfering in the dealings of outside entities or individuals with the government in order to inappropriately influence the outcome;

Gifts, hospitality and other benefits

- 4.2.13 Refusing gifts, hospitality or other benefits if they may have a real, apparent or potential influence on the objectivity of the person employed in carrying out their official duties and responsibilities or may place the person employed under obligation to the donor;
- 4.2.14 For greater certainty, accepting gifts, hospitality or other benefits is permissible if they:
- 4.2.14.1 Are infrequent and of minimal value;
 - 4.2.14.2 Are within the normal standards of courtesy or protocol;
 - 4.2.14.3 Arise out of activities or events related to the official duties and responsibilities of the person employed; and
 - 4.2.14.4 Do not compromise or appear to compromise the integrity of the person employed or the organization;
- 4.2.15 Reporting and seeking written direction from their deputy head when they cannot decline gifts, hospitality or other benefits that do not meet the criteria in subsection 4.2.14, or where it is believed their acceptance would bring sufficient benefit to the organization;

Financial arrangements, solicitation and use of government property

- 4.2.16 Refraining from undertaking any financial arrangements, including procuring goods, contracting services or administering grants and contributions or transfer payments, with outside entities or individuals where there is a risk for a real, apparent or potential conflict of interest or conflict of duties situation;
- 4.2.17 Refraining from soliciting gifts, hospitality, other benefits or transfers of economic value from outside entities or individuals that have, had or may have dealings with the organization, including during fundraising activities for the Government of Canada Workplace Charitable Campaign, without having received prior written approval from their deputy head;
- 4.2.18 Refraining from the direct or indirect use of, or allowing the direct or indirect use of, government property of any kind, including property leased to the government, for anything other than officially approved activities;

Post-employment

- 4.2.19 Before leaving the public service, reporting in writing to their deputy head all intended future employment and activities that might give rise to a real, apparent or potential conflict of interest in relation to their most recent duties and responsibilities;
- 4.2.20 If occupying a position designated as a risk for post-employment conflict of interest, before leaving the public service and during the one-year post-employment limitation period:
 - 4.2.20.1 Reporting in writing to their deputy head all firm offers of employment and activities that might give rise to a real, apparent or potential conflict of interest in relation to their most recent duties and responsibilities;
 - 4.2.20.2 Seeking the deputy head's written approval before:
 - 4.2.20.2.1 Accepting an appointment to a board of directors of, or employment with, outside entities or individuals with which they had significant official dealings, either directly or through their subordinates, in the year immediately prior to leaving their employment in the public service;
 - 4.2.20.2.2 Making representations on behalf of entities or individuals outside the public service to any government organization with which they had significant official dealings, either directly or through their subordinates, in the year immediately prior to leaving their employment in the public service;
 - 4.2.20.2.3 Giving advice to their clients or any new employer by using information that is not publicly available concerning the programs or policies of the department or organization with which they were employed or with which they had a direct and substantial relationship;
 - 4.2.20.3 Seeking the deputy head's written approval if applying for a waiver or reduction of the one-year post-employment limitation period.

5. Roles of other government organizations

- 5.1 The roles of other government organizations in relation to this directive are described in section 5 of the *Policy on People Management*.

6. Application

- 6.1 This directive applies to persons employed and the organizations listed in section 6 of the *Policy on People Management*.
- 6.2 For greater certainty, assistant deputy ministers and their equivalents are subject to the *Lobbying Act*. In the case of any conflict between this directive and the act, the act takes precedence.

7. Consequences of non-compliance

- 7.1 A person employed who has not complied with the requirements set out in this directive may be subject to disciplinary measures, up to and including termination of employment.

8. References

- 8.1 Legislation
- *Conflict of Interest Act*
 - *Criminal Code*
 - *Financial Administration Act*
 - *Lobbying Act*
 - *Privacy Act*
 - *Public Service Employment Act, Part 7*
- 8.2 Related policy instruments
- *Contracting Policy*
 - *Directive on Interchange Canada*
 - *Policy on Communications and Federal Identity*
 - *Policy on Privacy Protection*
 - *Values and Ethics Code for the Public Sector*

9. Enquiries

- 9.1 For interpretation of any aspect of this directive, contact Treasury Board of Canada Secretariat Public Enquiries.

Appendix A: Mandatory Procedures for Preventing and Resolving Conflict of Interest and Conflict of Duties Situations

A.1 Effective date

- A.1.1 These procedures take effect on April 1, 2020.
- A.1.2 These procedures replace Appendix B of the *Policy on Conflict of Interest and Post-Employment* (2012).

A.2 Procedures

- A.2.1 These procedures provide details on the requirements set out in section 4 of the *Directive on Conflict of Interest*.
- A.2.2 Mandatory procedures are as follows:

Procedures for preventing and dealing with situations of conflict of interest and conflict of duties during employment

- A.2.2.1 With regard to subsection 4.2.3, persons employed must within 60 days of initial or subsequent appointments, transfers or deployments and every time there is a significant change in their personal affairs or official duties:
 - A.2.2.1.1 Consider the nature of their official duties and responsibilities in relation to their outside employment or activity, and in relation to the characteristics of their assets and liabilities;
 - A.2.2.1.2 Determine whether there is any real, apparent or potential conflict of interest between their official duties and responsibilities and their outside employment or activities, or their assets and liabilities; and
 - A.2.2.1.3 If there is any real, apparent or potential conflict of interest situation or there is any question as to whether such a situation may exist, report this matter to their deputy head in accordance with their organization's procedures.
- A.2.2.2 With regard to subsection 4.2.4, if a situation arises where concurrent or competing official responsibilities conflict, persons employed must:
 - A.2.2.2.1 Make every effort to recuse themselves from the conflict;
 - A.2.2.2.2 Seek the advice of their manager; and
 - A.2.2.2.3 If a conflict of duties exists or there is any question as to whether it exists, report the matter to their deputy head, in accordance with their organization's procedures.

- A.2.2.3 With regard to subsection 4.2.6., prior to participating in non-candidacy political activities, persons employed must:
- A.2.2.3.1 Seek the advice of their manager and their organization's designated political activities representative;
 - A.2.2.3.2 Consider the nature of their official duties and responsibilities in relation to the political activity;
 - A.2.2.3.3 Determine whether there is any real, apparent or potential conflict of interest situation between their official duties and responsibilities and the political activity; and
 - A.2.2.3.4 If there is any real, apparent or potential conflict of interest situation, or there is any question as to whether the situation might exist, report the matter to their deputy head in accordance with their organization's procedures.

Procedures for preventing and dealing with post-employment conflict of interest situations

- A.2.2.4 With regard to subsections 4.2.19 and 4.2.20, persons employed and former persons employed must:
- A.2.2.4.1 Discuss the potential risk for a post-employment conflict of interest with their manager or former manager or seek guidance from the senior designated official;
 - A.2.2.4.2 If a risk is so determined, report the risk to their deputy head, in accordance with their organization's procedures; and
 - A.2.2.4.3 If applying for a waiver or reduction of the one-year post-employment limitation period, include, as a minimum, the following information:
 - A.2.2.4.3.1 The circumstances under which they are leaving or left their public service employment;
 - A.2.2.4.3.2 Their general employment prospects;
 - A.2.2.4.3.3 The significance to the government of the information they possessed by virtue of their position or former position in the public service;
 - A.2.2.4.3.4 The desirability of a rapid transfer of their knowledge and skills from the government to

private, other governmental or non-governmental sectors;

A.2.2.4.3.5 The degree to which their new employer might gain unfair commercial or private advantage; and

A.2.2.4.3.6 The authority and influence they possessed while in the public service.

Appendix B: Standard on Preventing and Resolving Financial Conflicts of Interest

B.1 Effective date

B.1.1 This standard takes effect on April 1, 2020.

B.2 Standards

B.2.1 This standard provides details on the requirements set out in section 4 of the Directive on Conflict of Interest.

B.2.2 Standards are as follows:

Reportable assets and liabilities

B.2.2.1 When identifying and updating the list of reportable assets and liabilities, a risk analysis must be done for each type of asset and liability that may present a risk of real, apparent or potential conflict of interest based on the organization's operations and current investment products and practices.

Financial mitigation strategies Divestment

B.2.2.2 When a person employed divests their asset or liability to completely eliminate any risk of a real, apparent or potential conflict of interest situation, it must be done through a sale or transfer to another person at arm's length, by relinquishing the asset, or by paying the debt or extinguishing the liability.

B.2.2.3 Any divestment must be documented and must consist of the total interests in the asset or liability of the person employed.

- B.2.2.4 Copies of documentation verifying the sale or transfer must be provided to the designated senior official within the time frame determined.

Activity withdrawal measures

- B.2.2.5 An activity withdrawal measure where a person employed recuses themselves from an outside activity related to their assets or liabilities to mitigate a conflict of interest must be documented and provided to the designated senior official within the time frame determined.
- B.2.2.6 When sharing necessary financial information of the person employed with internal parties for the effective implementation of the recusal measure, the personal concerns of the person employed will be taken into account.

Blind trust agreements

- B.2.2.7 Assets placed in a blind trust must be managed by a trustee who is empowered to exercise all of the rights and privileges associated with the assets, including the power to sell, with no direction from or control by the person employed.
- B.2.2.8 The trustee must be at arm's length from the person employed.
- B.2.2.9 The terms of the blind trust agreement must contain the following provisions:
- B.2.2.9.1 The assets placed in the trust shall be listed on a schedule attached to the agreement. The list of assets must include, at a minimum, all assets giving rise to a real, apparent or potential conflict of interest;
 - B.2.2.9.2 The assets to be placed in trust shall be registered to the trustee or held and administered by the trustee under law, unless they are in a Registered Retirement Savings Plan account;
 - B.2.2.9.3 The trustee can, at their discretion, modify the composition of the trust estate or the account;
 - B.2.2.9.4 The person employed shall have no power of management or control over the trust assets;
 - B.2.2.9.5 The person employed cannot offer or provide advice to the trustee, or in any way participate in any of the trustee's

decision-making processes, except as set out in subsection B.2.2.10 of this standard, or through written notices or advisements permitted under the trust agreement;

- B.2.2.9.6 The trustee shall not seek or accept any instruction or advice from the person employed on how to manage or administer the assets, except as set out in subsection B.2.2.10 of this standard;
- B.2.2.9.7 The trustee shall not provide information about the trust, including its composition, to the person employed, except for information that the person employed is required to file by law and for periodic reports on the overall value of the trust;
- B.2.2.9.8 The term of the trust shall be for as long as the person employed is required to comply with this directive and as long as the conflict of interest relating to the assets continues;
- B.2.2.9.9 The trustee shall deliver the trust assets to the person employed or other person identified in the agreement when the trust is terminated; and
- B.2.2.9.10 Within 60 calendar days following the anniversary date of the blind trust agreement's execution or other date provided in the agreement, the trustee must provide the designated senior official with an annual report containing the information required under the agreement.
- B.2.2.10 General investment instructions may be included in an additional schedule to the trust agreement that provide for proportions to be invested in various categories of risk, but may not be industry-specific.
- B.2.2.11 The person employed must provide a copy of the executed agreement to the designated senior official in the time frame set by the designated senior official.
- B.2.2.12 The person employed cannot have access to the annual report as long as the measures to manage the conflict of interest are required.
- B.2.2.13 Within 60 calendar days following each 10th anniversary date of the blind trust agreement, the designated senior official shall ensure that the terms are still valid with respect to mitigating the conflict of interest.

Blind management agreements

- B.2.2.14 A blind management agreement must be managed by a manager who is empowered to exercise all of the rights and privileges associated with the assets.
- B.2.2.15 The manager must be at arm's length from the person employed.
- B.2.2.16 The terms of the blind management agreement must include the following:
 - B.2.2.16.1 The assets to be managed under the agreement shall be listed on a schedule attached to the agreement. The list of assets must include, at a minimum, all assets giving rise to a real, apparent or potential conflict of interest;
 - B.2.2.16.2 The person employed shall have no power of management or control over the managed assets;
 - B.2.2.16.3 The manager of the agreement shall not seek or accept any instruction or advice from the person employed concerning the management of the assets. The person employed cannot offer or provide advice to the manager, nor can the person employed participate in any discussion or decision-making processes, wherever they may arise, that may particularly or significantly affect the assets that are subject to the agreement;
 - B.2.2.16.4 The person employed is prohibited from contacting the manager of the agreement. However, the person employed is entitled to be kept informed of the overall value of the assets for the duration of the agreement;
 - B.2.2.16.5 Within 60 calendar days following the anniversary date of the blind management agreement's execution or other date provided in the agreement, the manager of the agreement must provide the designated senior official with an annual report containing the information required under the agreement.
- B.2.2.17 Despite subsection B.2.2.16.4 of this standard, the agreement may also contain the following provisions:
 - B.2.2.17.1 If the manager of the agreement believes that an extraordinary corporate event is likely to materially affect the value of the assets, the manager of the agreement must inform the designated senior official of that fact. If the

designated senior official concludes that the circumstances may cause significant undue loss or hardship to the person employed, financial information as approved by the designated senior official, with the authorization of the deputy head, may be provided to the person employed;

B.2.2.17.2 In exceptional circumstances only, the person employed may personally intervene, but only after the designated senior official has determined that the intervention would not give rise to a conflict of interest situation and that failure to intervene would cause the person employed undue loss or hardship.

B.2.2.18 The term of the agreement shall be for as long as the person employed is required to comply with this directive and as long as the conflict of interest relating to the assets continues.

B.2.2.19 A copy of the executed agreement must be provided to the designated senior official within the time frame set by the designated senior official.

B.2.2.20 The person employed cannot have access to the annual report as long as the measures to manage the conflict of interest are required.

B.2.2.21 Within 60 calendar days following each 10th anniversary date of the blind management agreement, the designated senior official must ensure that the terms are still valid with respect to mitigating the conflict of interest.

Other trusts and management agreements

B.2.2.22 Other forms of trust or management agreements shall comply with the requirements provided in this standard for blind trusts or blind management agreements, respectively.

Agent arrangements

B.2.2.23 An agent arrangement, such as powers of attorney or mandates that empower someone to act on behalf of another person, must be governed by and interpreted under Canadian laws.

Asset-freezing arrangements

B.2.2.24 An asset-freezing agreement is between the person employed and the deputy head and must be in writing.

- B.2.2.25 Under an asset-freezing arrangement, a person employed cannot have direct control over the assets that give rise to a conflict of interest.
- B.2.2.26 The person employed must select a trustee, agent, manager or investment advisor who is at arm's length from the person employed to administer the asset-freezing arrangement.
- B.2.2.27 The terms of the asset-freezing agreement must contain the provisions in subsection B.2.2.9 if it is in the form of a trust, along with the following provisions:
- B.2.2.27.1 At least once a year, the person employed must provide the designated senior official with a statement received from a trustee, an agent, a manager of the agreement, or an investment advisor, indicating that there has been no activity on the part of the person employed in relation to the assets;
- B.2.2.27.2 The trustee, agent, manager of the agreement or investment advisor issuing the statement must be in a position to know whether the person employed has been involved in the assets;
- B.2.2.27.3 The person employed must provide the designated senior official with a copy of the statement within the time frame set out in the agreement.

Cost reimbursement

- B.2.2.28 Reimbursement of reasonable administrative costs incurred on behalf of the person employed as a result of implementing any of the financial mitigation strategies described in Appendix B will be determined by the deputy head.
- B.2.2.29 Any income tax adjustment or other adjustment that may result from the administration cost reimbursement must be borne by the person employed.

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