

United States Department of Health and Human Services



## 2023 Annual Ethics Training

### Conflicts of Interest: General Principles

- A criminal law prohibits you from participating **personally and substantially** in an official capacity in any **particular matter** that would have a **direct and predictable effect** on your financial interests or the financial **interests** of certain other persons.
- Typically, if you have such interests, you must disqualify yourself from participating in the matter unless an exemption applies.
- For each violation, potential penalties range from:
  - 1 - 5 years of imprisonment, and/or
  - A civil monetary penalty
- Let's take a closer look at the **bolded** elements of this rule...

[Previous](#)

Page 7 of 65

[Next](#)

## 2023 Annual Ethics Training

### Element: Personal and Substantial Participation

- **IF** you (either individually or by directing others) decide, supervise, recommend, approve/disapprove, determine, fund, advise, or investigate any significant aspect of or otherwise contribute to a government matter...
  - **THEN** you have participated personally and substantially.
- 
- *Personal* means active participation, including the direct and active supervision of a subordinate in a matter.
  - *Substantial* means that your participation is of significance to the matter, even if not determinative.
    - Ministerial actions - those not involving individual judgment or discretion - are not likely to rise to the level of substantial participation.

[Previous](#)

Page 8 of 65

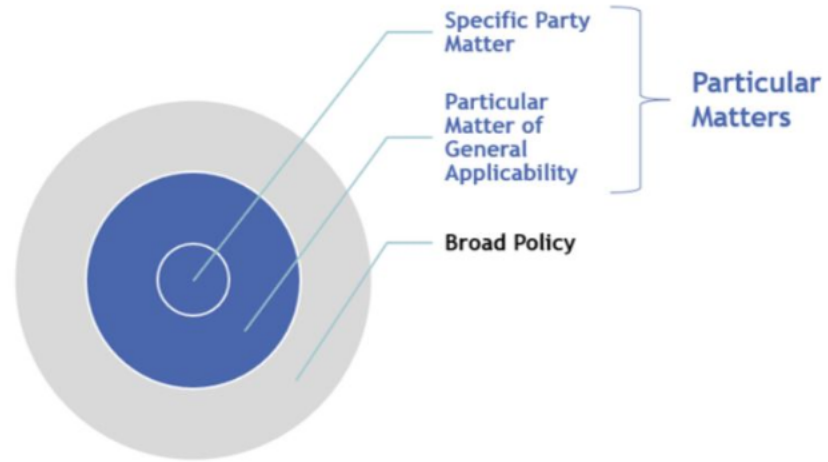
[Next](#)

## 2023 Annual Ethics Training

### Element: Interests

The law applies to particular matters. There are two types:

1. Specific Party Matters - Involve a limited group of identified parties and include:
  - investigations, lawsuits, adjudications, permits/licenses, meetings, contracts and grants (in the context of awards and administration)
2. Particular Matters of General Applicability (PMGAs) - Are directed at, narrowly focused on or uniquely impact a discrete and identifiable class based on shared characteristics or traits that are distinguishable from the general population, and include:
  - legislation, rulemaking, sub-regulatory guidance, developing standards, setting eligibility requirements, contracts (in the context of statements of work, request for proposals)





## 2023 Annual Ethics Training

### Element: Interests

- Absent specific regulatory exemptions, financial interests under the law include:
  - Ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate
  - Salary, consulting fees, or profit-sharing interest
  - Indebtedness
  - Outside activities or employment
  - Prospective employment
  - Any similar interest

[Previous](#)

Page 10 of 65

[Next](#)

## 2023 Annual Ethics Training

### Element: Interests of Others Attributed to You

For purposes of the law, the financial interests of the following people and organizations are also yours:

- Your spouse
- Your minor child
- Your general partner
- An organization that you serve as officer, director, trustee, general partner, or employee
- A person or organization with which you are negotiating for or have an arrangement concerning prospective employment

[Previous](#)

Page 11 of 65

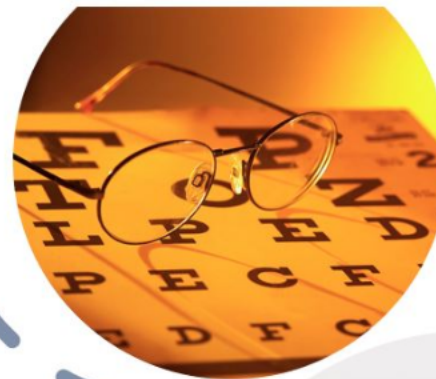
[Next](#)

## 2023 Annual Ethics Training

### Element: Direct and Predictable Effect

*Hindsight is 20/20*

- Under the law, a direct and predictable effect results from a close causal link between the decision or action to be taken in a matter and its expected effect on your financial interests.
- Notably, since the predictability of an effect may be more apparent after the fact, you should assume you have a conflict of interest if all other elements have been met.
- Should you have questions about whether a financial conflict of interest exists, contact your ethics official immediately.



[Previous](#)

Page 12 of 65

[Next](#)

## 2023 Annual Ethics Training

### Seek Immediate Guidance

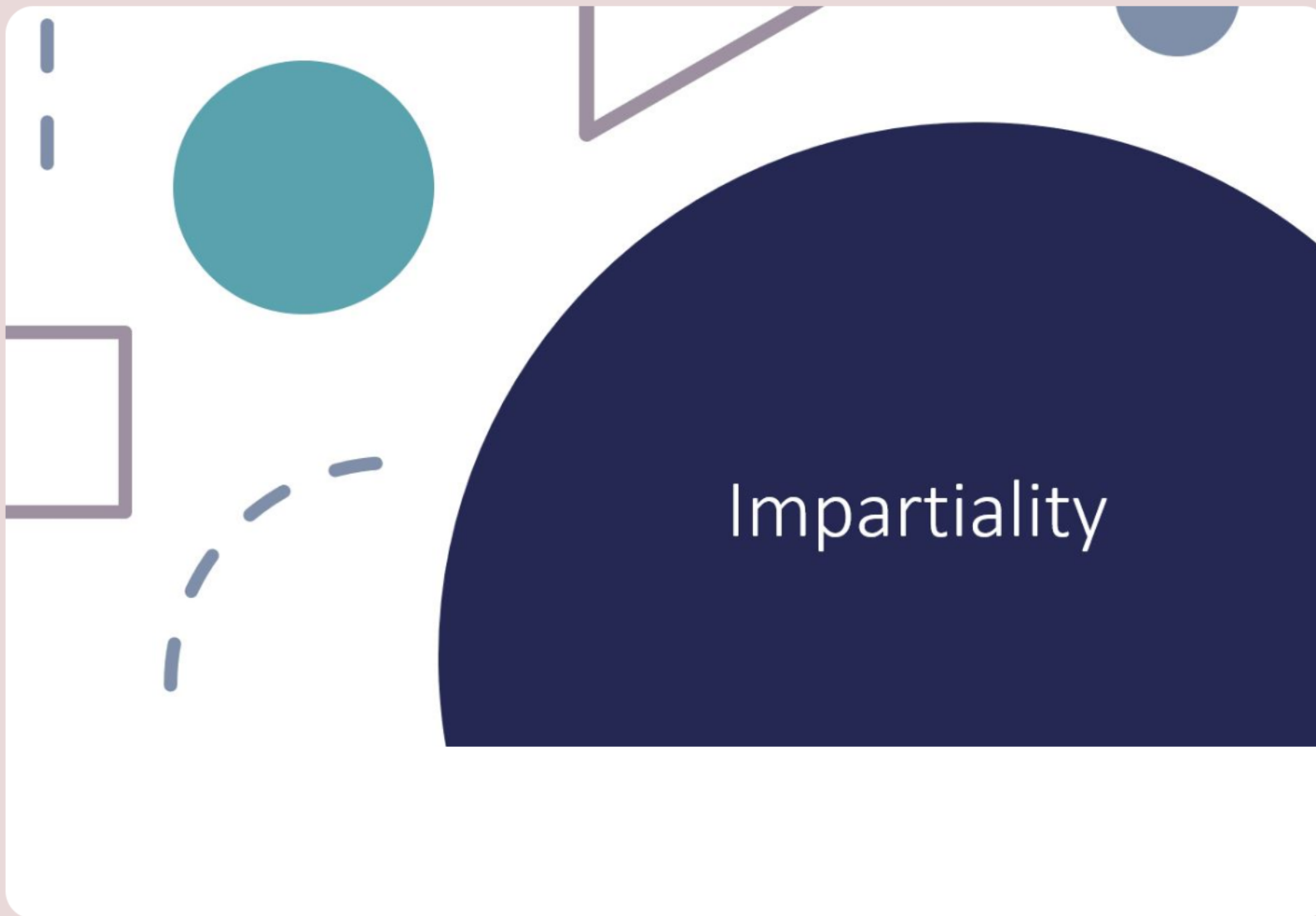
If you think you might have a conflicting financial interest with a government matter you are working on, you should not begin work on the matter. In addition, alert your supervisor, and seek guidance from your ethics official. Possible remedies include not working on the government matter, selling the financial interest, or resigning from an outside position. The appropriate resolution will depend on your particular circumstances.

[Previous](#)

Page 15 of 65

[Next](#)

## 2023 Annual Ethics Training



[Previous](#)

Page 20 of 65

[Next](#)

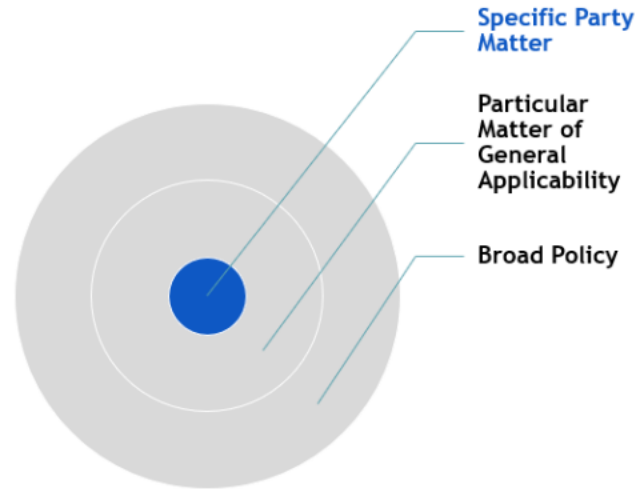
## 2023 Annual Ethics Training

### Impartiality: General Principles

Impartiality, a core ethical principle, requires that government action be taken on behalf of the public, not your friends, family, colleagues, or others.

Appearances matter. If a reasonable person with knowledge of the relevant facts would question your impartiality, you may not participate in a **specific party matter** that would have a direct and predictable effect on the financial interest of a member of your household or when you have a **covered relationship** with someone who is a party or represents a party to that matter.

A **specific party matter** is one that involves identified parties, such as a grant, contract, application, investigation, or lawsuit, as opposed to a general matter that affects a broad class of persons or organizations.





## 2023 Annual Ethics Training

### Catch-All Provision

If you are concerned that circumstances other than those described would raise a question about your impartiality, check with your ethics official to help determine if you should participate in the specific party matter.

[Previous](#)

Page 22 of 65

[Next](#)

## 2023 Annual Ethics Training

### Covered Relationships

You have a **covered relationship** with the following people and organizations:

- A person or organization, other than a prospective employer, with whom/which you have or seek a business, contractual, or other financial relationship that involves other than a routine consumer transaction.
- A person who is a member of your household, or who is a relative with whom you have a close personal relationship.
- A person or organization for whom/which your spouse, parent, or dependent child is, to your knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.
- Any person or organization for whom/which you have, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.
- An organization, other than a political party, in which you are an active participant.

[Previous](#)

Page 23 of 65

[Next](#)

## 2023 Annual Ethics Training

### Resolution Options: Conflicts of Interest and Appearance Issues

- **Disqualification:** You are not permitted to work on, and you must isolate yourself from, the matter that is creating the conflict or impartiality problem. You may be given other assignments where the conflict does not exist.
- **Divestiture of Financial Interest:** You sell, gift or otherwise dispose of the financial interest that is creating the conflict. If your agency directs you to divest, you should consult your ethics officials about the possibility of deferring any taxes on any resulting capital gains before you sell the asset.
- **Change of Assignment:** If practical, you may be transferred to another position or new job duties where the conflict will not arise.
- **Cease Outside Activity / Resignation:** If you are engaged in an outside activity that poses a conflict, then you can choose, or may be directed, to end that outside activity.
- **Waiver/Authorization:** In some cases, your ethics official can help to determine whether a waiver or authorization to allow your participation, despite the conflict of interest or impartiality concern, is appropriate.

[Previous](#)

Page 25 of 65

[Next](#)

## 2023 Annual Ethics Training



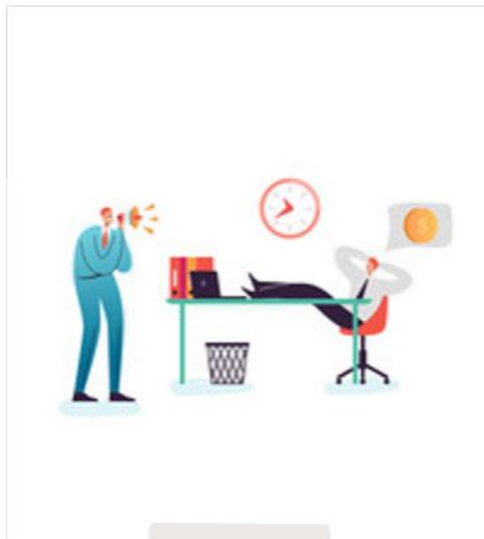
[Previous](#)

Page 28 of 65

[Next](#)

## 2023 Annual Ethics Training

### Misuse of Position: General Principles



The Standards of Ethical Conduct state that "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." As federal employees, it is crucial that we maintain the public's trust in the Department. In doing so, it is vital that employees do not misuse their public position for private gain.

[Previous](#)

Page 29 of 65

[Next](#)

## 2023 Annual Ethics Training

### Use of Nonpublic Information

- Nonpublic information is any information that you receive because of your federal employment that you know or reasonably should know has not been made available to the general public.
- Nonpublic information may still be considered nonpublic even if selectively disclosed to a few individuals or organizations.
- Generally, for information to be considered public, it must have been effectively disclosed in a manner sufficient to ensure its availability to the investing public.

**Social Media Tip:** Do not share information on your social media unless it has been made publicly available through official channels.





## 2023 Annual Ethics Training

### Endorsements

- You may not use or permit use of your government position, title, or any authority associated with your public office in a manner that could reasonably be construed to imply that the government sanctions or endorses a product, service or other activity of a private organization or cause, no matter how worthy.
- For example, hanging your photo with official title at your local barber shop or salon is prohibited.

**Social Media Tip:** Reference to your title or position in the biographical information section of your personal social media profile is acceptable, but avoid using them if it would cause the appearance of official sanction or endorsement.

[Previous](#)

Page 31 of 65

[Next](#)

## 2023 Annual Ethics Training

### Use of Official Time

- It goes without saying that all of us who are government employees are paid for an honest day's work and an honest effort to perform our official duties.
- While on official time, government employees should be performing official duties.
- For example, when you are teleworking, you should not be spending several hours planning a vacation by booking flights, hotels, and rental cars.



## 2023 Annual Ethics Training

### Use of Government Property

- Employees have a duty to protect and conserve government property and must not use such property, or allow its use, for other than authorized purposes.
- Here are some definitions that you might find helpful:
  - Government property: Includes any form of real or personal property in which the government has an ownership, leasehold, or other property interest as well as a right or other intangible interest that is purchased with government funds, including the services of contractor personnel.
  - Authorized purposes: Are those purposes for which the government property is made available to employees for those purposes authorized in accordance with law or regulation.
  - Limited personal use of government IT property is authorized under the OCIO Rules of Behavior.

**Social Media Tip:** Briefly checking personal social media on federal equipment is acceptable under the rules. However, personal use should be kept to a minimum and must not interfere with official duties.

[Previous](#)

Page 33 of 65

[Next](#)

## 2023 Annual Ethics Training

### Additional Notes on Misuse

- **Insider Trading:** You may not engage in a financial transaction using nonpublic information or allow the improper use of nonpublic information to further your own private interest or that of another, whether through advice, recommendation, or knowing unauthorized disclosure.
- **Fundraising:** When acting in your personal capacity, you may not use or permit the use of your official title, position, or authority associated with your federal employment to further a fundraising effort.

[Previous](#)

Page 34 of 65

[Next](#)

## 2023 Annual Ethics Training



[Previous](#)

Page 39 of 65

[Next](#)



## 2023 Annual Ethics Training

### Gifts: General Principles

- As a federal employee, you must be mindful of the ethics rules when giving and receiving gifts. We'll go over some of the major ethical implications here.
- Under the ethics regulation, a gift is:
  - Any gratuity, favor, discount, entertainment, or other item having monetary value.
  - This includes services as well as gifts of training, transportation, local travel, lodging, and meals.

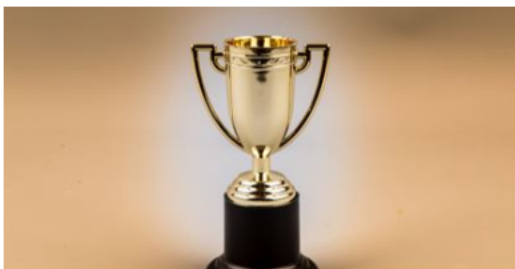
[Previous](#)

Page 40 of 65

[Next](#)



## 2023 Annual Ethics Training



### What is not a gift?

- Modest items of food and refreshments that are not a part of a meal, e.g., coffee and donuts
  - Does not include food and refreshments if alcoholic beverages are served
- Items with little intrinsic value, e.g., plaques, certificates, trophies
- Loans from banks with terms available to the public
- Opportunities and benefits available to the general public or class of employees
- Rewards and prizes to competitors
- Pensions from former employers
- Free attendance to an event that an employee is giving an official speech at (but only for the day of the speech)
- Gifts accepted by the government under statutory authority
- Anything that the employee or government pays fair market value to acquire

[Previous](#)

Page 41 of 65

[Next](#)

## 2023 Annual Ethics Training

### Gifts from Outside Sources

As a general rule, employees may not solicit or accept gifts that are:

- Given due to their official position
- Offered by a prohibited source

What is a prohibited source?

- Prohibited sources include HHS contractors, employees of HHS contractors, companies regulated by HHS, and anyone seeking official action from HHS. An official action may include but is not limited to:
  - Contracts
  - Hearings
  - Grants
  - Lawsuits
  - Drug and device approvals
  - Benefit payments



[Previous](#)

Page 42 of 65

[Next](#)

## 2023 Annual Ethics Training

### Exceptions to the Gift Rule

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Unsolicited gifts up to \$20 in value (not cash), per source, per occasion, provided all gifts accepted from a given source within a calendar year do not exceed \$50.

Awards and honorary degrees.

Social invitations unrelated to federal employment.

Admission to widely attended gatherings (WAGs). Requirements:

- large number of persons expected to attend
- persons with a diversity of views/interests present
- opportunity to exchange ideas among invited persons

(Written ethics approval is required)

[Previous](#)

Page 43 of 65

[Next](#)

## 2023 Annual Ethics Training

### Exceptions to the Gift Rule (cont.)

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Gifts based on personal relationships. These relationships are established prior to or unrelated to the employee's federal role. Both familial and personal friendships are included.

Gifts based on outside business/employment relationship

Gifts from political campaigns (example: gift of air travel to speak at campaign rally in personal capacity)

Informational materials (examples: pamphlets and paper handouts)

Discounts provided to all government employees or the public (example: a favorable car insurance rate offered to all federal employees)

[Previous](#)

Page 44 of 65

[Next](#)

## 2023 Annual Ethics Training

### Gifts Between Employees

#### An employee may not:

- Give a gift to a superior
- Solicit a contribution from another employee for a gift to a superior
- Receive a gift from an employee receiving less pay UNLESS
  - the employee giving the gift is not a subordinate, AND
  - There is a personal relationship between the employees

#### Notwithstanding, there are several exceptions to the rule:

##### *Occasional basis:*

- Non-cash gifts that are \$10 or less in value per occasion
- Personal hospitality provided at a residence
- Items given in connection with receipt of personal hospitality
- Food and refreshments shared in the office
- Leave transfers

##### *Special Infrequent Occasions:*

Given in recognition of personally significant events (marriage, birth/adoption of child, illness, etc.) or on occasions terminating subordinate-superior relationship (retirement, new job, transfer)

- Not limited to \$10 or less, but still appropriate to the occasion
- Cash gifts are permissible
- Contributions may be collected on a voluntary basis

[Previous](#)

Page 45 of 65

[Next](#)

## 2023 Annual Ethics Training



Outside Activities

[Previous](#)

Page 48 of 65

[Next](#)



## 2023 Annual Ethics Training

### Outside Activities: General Principles

You must never participate in an outside activity or outside employment that conflicts with your official duties at HHS.

An outside activity conflicts with your official duties if it:


1. Is prohibited by any criminal laws or ethics rules including, but not limited to:
  - Criminal conflict of interest statutory restrictions on third party representation before the government, bribery, and salary supplementation
  - Hatch Act restrictions on partisan political activity
  - Ethics rules on misuse of position or outside compensation
  - Additional HHS restrictions
2. Would require your disqualification from matters so central or critical to the performance of your official duties that your ability to perform your duties would be materially impaired.

[Previous](#)

Page 49 of 65

[Next](#)

## 2023 Annual Ethics Training



### Outside Activities: Additional HHS Restrictions

- All HHS employees are subject to additional restrictions:
  - No compensation for assisting with preparation of grant applications, contract proposals, or other documents for submission to HHS.
  - No compensation for employment with an HHS-funded activity.
- For FDA employees who are public or confidential financial disclosure report filers, no self-employment involving the sale or promotion of FDA-regulated products and no employment with a significantly regulated organization, with limited exceptions.
- For NIH employees, no employment with a substantially affected organization, supported research institution, or health care provider or insurer, and no involvement in the sale or promotion of the products or services of such an organization, provider, or insurer, with limited exceptions.

[Previous](#)

Page 50 of 65

[Next](#)

## 2023 Annual Ethics Training



### Teaching, Speaking, and Writing

You are prohibited from receiving compensation for outside teaching, speaking, or writing that relates to your official duties, unless certain exceptions apply.

It **relates to your official duties** if:

- Circumstances indicate that you were invited because of your official position (as opposed to expertise in the subject matter);
- Invitation extended by entity with interests that may be affected by your official duties;
- Information conveyed through activity draws substantially on nonpublic government information;
- Subject of the activity deals significantly with any matter to which you are presently assigned, or were assigned, within the previous one-year period; or
- Subject of the activity deals significantly with any ongoing or announced policy, program, or operation of the agency.

[Previous](#)

Page 51 of 65

[Next](#)

## 2023 Annual Ethics Training

### Exception for Teaching

There is an exception that, in certain circumstances, allows you to accept compensation for teaching a course involving multiple presentations even if the course relates to your official duties. Various requirements must be met, however, to use this exception.

The teaching exception will apply when the course is offered as part of:

- Regularly established curriculum of either an institution of higher learning, or an elementary or secondary school, or
- Program of education or training sponsored and funded by the federal government or by a state or local government.



## 2023 Annual Ethics Training



**Prior approval must be obtained by filing an HHS-520 request before participating in paid or unpaid activities that involve:**

- Professional or consultative services, including serving as an expert witness;
- Teaching, speaking, writing, or editing activities that relate to your official duties, or when invited by a prohibited source;
- Serving as an officer, director, board member or other fiduciary, or as a member of a group to which you provide advice, counsel, or consultation.

**Exceptions:**

- Uncompensated service (that will not involve the provision of professional services) to a political, fraternal, social, religious, or recreational organization.
- Certain types of activities, or individual cases, that the HHS Designated Agency Ethics Official (DAEO) has waived the prior approval requirement for:
  - Letters to the editor(s) of newspapers and other periodicals;
  - Service as officer, director, board or advisory group member to HOA, COA, or similar organizations, provided the employee has a personal ownership interest;
  - Certain PTA service; and
  - Uncompensated activities involving speaking with or being interviewed by press or news media.

[Previous](#)

Page 53 of 65

[Next](#)

## 2023 Annual Ethics Training

### Additional Prohibitions

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#### Even after an HHS-520 is approved:

- No use of official title, position, or authority.
- No use of government time or resources.
- May not speak for the government (use disclaimer).
- No use of work relationship to obtain outside employment.
- No representation back to the government on behalf of another unless an exception applies.
- Must comply with all laws and regulations.

[Previous](#)

Page 54 of 65

[Next](#)



## 2023 Annual Ethics Training

### Outside Activity Social Media Tips

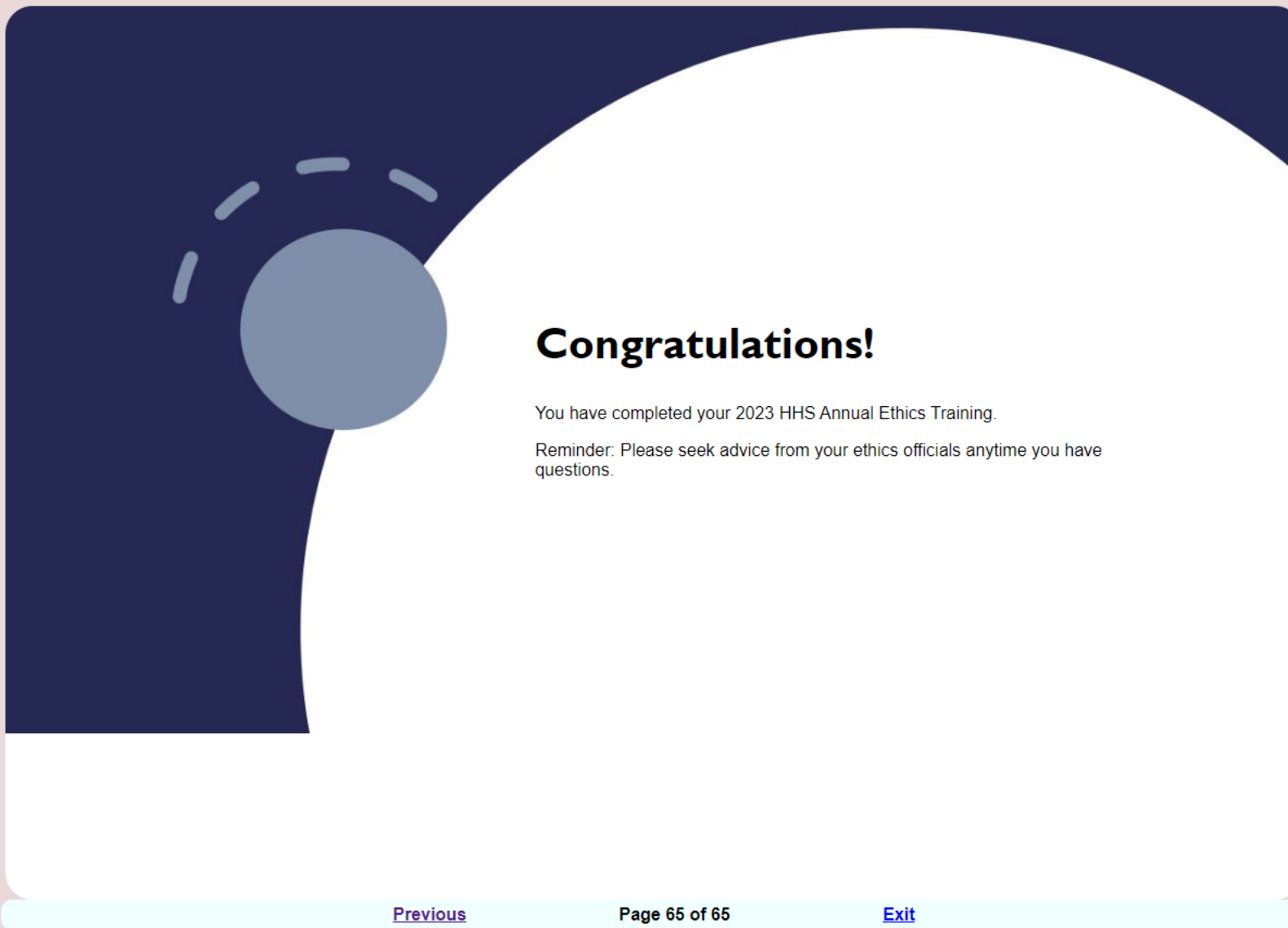
- While participating in an outside activity, avoid referencing your official title, position or authority on social media.
  - Example - Margot may not list her official HHS phone number or email on the "contact me" section of her outside business's Facebook page.
- Be conscientious when using social media to bring in new clientele and business relationships for an outside entity. You could run into conflicts of interest or appearance of impartiality issues.
  - Example - Organization X is applying for a grant administered by Ahmed's office. Ahmed should not use social media (or any other medium) to contact Organization X about a partnership with his outside business.

[Previous](#)

Page 55 of 65

[Next](#)

## 2023 Annual Ethics Training



# Congratulations!

You have completed your 2023 HHS Annual Ethics Training.

Reminder: Please seek advice from your ethics officials anytime you have questions.

[Previous](#)      Page 65 of 65      [Exit](#)