



Smithsonian
Institution

SMITHSONIAN DIRECTIVE 103,
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SMITHSONIAN INSTITUTION STANDARDS OF CONDUCT

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1. INTRODUCTION

(a) Purpose

This directive provides standards of conduct applicable to all Smithsonian Institution (“Smithsonian”) trust and federal employees, and serves as guidance to ensure that Smithsonian employees conduct their activities in accordance with accepted principles of ethics and in the best interests of the Smithsonian.

(b) Background

This directive supersedes the version of SD 103, *Standards of Conduct*, issued on February 13, 2012. It incorporates the basic principles and guidelines of the 2012 standards of conduct, clarifies some of the procedures to be followed in implementing these principles, and provides further guidance in areas that raise substantial ethical concerns.

(c) Applicability of Standards

These standards establish the primary code of conduct at the Institution that governs the acts of individual employees. Other standards of conduct govern the acts of individuals who are not Smithsonian employees (see, e.g., [SD 208, *Standards of Conduct Regarding Smithsonian Volunteers*](#)), establish principles of institutional ethics (see, e.g., [Statement of Values and Code of Ethics](#)), and pertain to other aspects of employee conduct (see, e.g., Chapter 310, *Employment of Relatives*, in SDs [212](#) and [213](#), the *Federal* and *Trust Personnel Handbooks*).

It is the responsibility of each Smithsonian employee to be familiar with all of these standards and directives.

The Smithsonian standards of conduct are based on federal laws and regulations, principles applicable to public trusts and nonprofit organizations, and accepted professional codes of ethics. They incorporate and expand upon the *Fourteen Principles of Ethical Conduct for Smithsonian Employees*, which are found in [Appendix 1](#).

In addition to the ethics guidance provided in this directive, Smithsonian employees can access the [Office of General Counsel \(OGC\) webpage](#) on Prism for general ethics information and to find links to Smithsonian ethics forms.

(d) Responsibility and Key Definitions

Covered Executives. “Covered Executives,” for purposes of this directive, includes but is not limited to the Secretary of the Smithsonian, all direct reports to the Secretary, and all Unit Directors with broad decision-making authority within the Institution. All individuals whose positions are designated as Covered Executive are notified of such at the time they either receive their offer of employment or transfer to a new position within the Smithsonian that is designated as a Covered Executive. All Covered Executives must contact the General Counsel to be briefed on their responsibilities under these Standards of Conduct within thirty (30) days of hire or assumption of a Covered Executive position. A list of current Covered Executives is updated annually and available on the OGC Prism website.

Employee Responsibility. Primary and ultimate responsibility rests with the individual employee to become familiar with these standards, to act in accordance with them, and to seek guidance before engaging in any activity that might not be consistent with the principles or specific provisions set forth in these standards. Employees may seek guidance on these standards from Ethics Counselors who are available through OGCEthics@si.edu.

Ethics Counselors. The General Counsel may designate other Smithsonian employees as ethics counselors to consult with employees in advance regarding the propriety of activities covered by these standards (“Ethics Counselors”). Ethics Counselors are responsible for the interpretation of these standards, and for advising supervisors and employees regarding the application of the standards on a case-by-case basis. **Ethics counselors can be reached through email at OGCEthics@si.edu or by calling the OGC main office number.**

Office of the General Counsel (OGC). The General Counsel is the Ethics Officer for the Smithsonian and is responsible for overseeing these standards of conduct and conflict of interest matters.

Office of Human Resources (OHR). OHR is responsible for (a) providing each employee with a copy of these Standards of Conduct during orientation, (b) notifying each employee at the time of hire, or at the time he or she assumes a new position within the Smithsonian, whether he or she is a designated Covered Executive, Unit Director, and/or mandatory annual Financial Disclosure Report filer, and (c) coordinating with OGC to maintain and update on an annual basis a current list of Unit Directors.

Office of the Secretary (OS). The Secretary, in consultation with OGC, is responsible for identifying all Covered Executives.

Unit Directors. Unit Directors are museum directors, research center directors, and individuals who lead primary Smithsonian departments. Unit Directors are responsible for ensuring that their staff members are aware of the standards of conduct. All new Unit Directors must contact the General Counsel to schedule an appointment to be briefed on their responsibilities under

these Standards of Conduct within thirty (30) days of hire or assumption of a position that bears Unit Director responsibility. OGC and OHR share responsibility for maintaining, updating and making available on an annual basis a current list of Unit Directors on their websites.

2. LOYALTY AND CONFLICTS OF INTEREST

Smithsonian employees must ensure that their conduct does not compromise the integrity of, or public confidence in, the Smithsonian. Employees must maintain high standards of honesty, integrity, and loyalty to the Smithsonian. Employees must not engage in private or personal activities that might conflict, or appear to conflict, with Smithsonian interests, such as:

- Using Smithsonian employment for private gain;
- Giving preferential treatment to any person or company for any reason; or
- Failing to make impartial decisions on the Smithsonian's behalf.

Employees must also be aware of and guided by the generally accepted professional standards and codes of ethics applicable in their respective professional fields, except to the extent that such standards may conflict with Smithsonian policies.

3. COMPLIANCE, CLEARANCE, INTERPRETATION AND ADVICE

Employees must ensure that they comply with the general principles and specific provisions of these standards. If any doubt exists as to whether an activity or planned activity violates these standards, employees are obligated to seek advice immediately from an Ethics Counselor.

Certain activities identified in these standards require prior clearance and/or approval by the appropriate supervisory officials and/or from an Ethics Counselor. Employees are responsible for providing full disclosure of all relevant facts when seeking clearance or approval to conduct such activities.

4. REMEDIAL ACTION AND DISCIPLINE

An employee's failure to comply with these standards is cause for remedial or disciplinary action. Such action may include but is not limited to:

- A letter of reprimand;
- Change in assigned duties;
- Divestment of any conflicting interest;

- Disqualification from a particular assignment; and
- Appropriate discipline, up to and including dismissal.

5. FEDERAL LAWS RELATING TO EMPLOYEE CONDUCT

Apart from disciplinary or remedial action by the Smithsonian arising from a violation of these standards, civil and criminal penalties may be imposed for violation of federal statutes, to the extent that such statutes are applicable to federal or trust fund employees.

It is the responsibility of Smithsonian employees to be aware of applicable statutes and to ensure that their conduct does not violate federal laws, including those referenced in [Appendix 2](#). Ethics Counselors are available to advise employees about how their conduct, or planned activities, might violate federal statutes.

6. GIFTS FROM OUTSIDE SOURCES

(a) General Policy Irrespective of Source

Employees shall not solicit or accept any gift from *any* source that is or appears to be offered because the employee holds a Smithsonian position or may have influence within the Smithsonian.

(b) Definitions

- **Gift:** An object, financial interest, money, entertainment, favor, discount, travel, lodging, meal, or other arrangements that benefit the employee.
- **Prohibited Source:** Any organization that or person who: (1) is seeking official action by the Smithsonian; (2) does business or seeks to do business with the Smithsonian; or (3) has interests that may be substantially affected by performance or nonperformance of the employee's official duties.
- **Gift "to" an Employee:** Gifts to an employee's family member, or to any other person because of the recipient's relationship to the employee, or to any person or organization at the request or recommendation of the employee, are subject to the same restrictions as personal gifts to the employee.

- **Gift “to” the Smithsonian:** Gifts to the employee but accepted by or on behalf of the Smithsonian, such as reimbursement of an employee’s official travel expenses, or other in-kind gifts for official Smithsonian use are not treated as personal gifts for purposes of applying the prohibitions described in this section. See Section 14 for rules on reimbursements for travel on Smithsonian business.

(c) Gifts Offered by Prohibited Sources

An employee may not solicit or accept a gift from a “prohibited source” unless one or more of the following applies:

- Circumstances make it clear that the gift is motivated by a family relationship or personal friendship rather than by the position of the employee.
- The gift is food or refreshments of modest value, given on infrequent occasions, and in the ordinary course of business, such as a luncheon or dinner meeting.
- The gift is a loan from a bank or other financial institution on terms generally available to the public.
- The gift qualifies as an award or honorary degree and meets the requirements set forth in subsection (d) below.
- The gift is unsolicited and has an aggregate market value of \$50 or less per occasion, provided that the aggregate market value of individual gifts received from any one person or organization under the authority of this exception does not exceed \$100 in a calendar year. This exception only applies to tangible goods and does not apply to gifts of cash or of financial interests such as stocks, bonds, or certificates of deposit.
- The gift is unsolicited and the employee pays the source of the unsolicited gift the fair-market value of the item and reports the transaction to an Ethics Counselor for clearance within thirty (30) days of receipt.

Notwithstanding these exceptions, an employee shall not: (1) accept a gift in return for being influenced in the performance of an official act; (2) solicit or coerce the offering of a gift; or (3) accept a gift in violation of any statute.

Even where the acceptance of a gift may be technically permitted by one of the exceptions, there may be additional considerations that require an employee to decline a gift. An employee should consult an Ethics Counselor for guidance when he or she wishes to keep a gift offered to him or her under an abovementioned exception.

(d) Honorary Degree or Award with Monetary Value

Clearance by an Ethics Counselor is required before an employee accepts either (1) an honorary degree that may or may not have a monetary value, or (2) an award with monetary value from an external organization. Awards that do not fall into either of these categories do not require OGC clearance. For a degree or award that does require clearance, the employee must demonstrate that it is given as part of an established program that makes the award (i) on a regular basis, or pursuant to funding that ensures the award will continue to be given on a regular basis, and (ii) pursuant to written standards. When an employee receives notification of the honorary degree or award, the employee will prepare a memorandum to the General Counsel through the Unit Director or Under Secretary (if the employee is a Unit Director) seeking approval to accept it. The memorandum should document that the two criteria above have been met; a copy of the notification from the granting organization must be attached to the memorandum. A sample memorandum is available on the OGC Prism website.

(e) Gifts and Decorations from Foreign Governments

An employee is prohibited from accepting a gift or decoration from a foreign government except as provided in this section.

(1) Gifts.

Below Foreign Gifts and Decorations Act (FGDA) Threshold. An employee may accept a gift from a foreign government where the gift (i) is tendered and received as a souvenir or mark of courtesy; and (ii) does not exceed the monetary threshold established in the FGDA regulations.

Above the FGDA Threshold. An employee may accept a gift from a foreign government that exceeds the threshold only when the refusal of the gift would likely cause offense or embarrassment to the donor or would otherwise adversely affect the interests of the Smithsonian. Gifts accepted under these circumstances are deemed to have been accepted on behalf of the Smithsonian. Within 30 days of acceptance of such gifts or the employee's return to a regular duty station, the employee must report the gift to the Unit Director and the General Counsel, and must deposit the gift with the Unit Director. If the Unit Director determines that the gift cannot be used for official purposes, it shall be disposed of in accordance with Smithsonian property management regulations (see [SD 315, Personal Property Management](#), and the [Personal Property Management Manual](#)).

For gifts from foreign governments that involve the payment of travel costs, please see Section 14, Sponsored Travel.

(2) Decorations. Decorations awarded by a foreign government to an employee in

recognition of outstanding or unusually meritorious performance may be accepted, retained, and worn by the employee, subject to the approval of the Secretary of the Smithsonian. Upon receipt or tender of the decoration, the employee must contact the General Counsel to commence the approval process.

In the event that the Secretary does not approve the retention of the decoration by the employee, the decoration is deemed to have been accepted on behalf of the Smithsonian and must be deposited with the Office of the Secretary.

- (3) Employment or Positions with Foreign Governments.** Smithsonian employees may not become employees of or accept positions with any foreign government. Employees must consult with an Ethics Counselor prior to making any commitment to perform services for a foreign government or any of its instrumentalities.

7. SOLICITATIONS AND GIFTS BY EMPLOYEES

(a) Individual Solicitations and Sales by Employees

Unless in connection with official Smithsonian activities, employees shall not solicit or promote the sale of any goods or services on Smithsonian premises or using Smithsonian resources or facilities, including email. This restriction includes fund raising of any kind for outside organizations.

Note: This restriction does not apply to the placement of advertisements or notices on bulletin boards or in publications explicitly provided by the Smithsonian for these purposes.

(b) Gifts to Supervisors

Supervisors cannot accept gifts from an employee receiving less pay. Employees shall not give a gift to supervisor, make a donation as a gift to a supervisor, or solicit contributions from other employees for a gift to a supervisor. There are exceptions to this prohibition. They are as follows: an employee may give a voluntary gift of a nominal value to a supervisor on a special occasion such as marriage, illness, or retirement, or through an anonymous office gift exchange.

Employees are not similarly prohibited from receiving gifts from supervisors.

Employees and supervisors are advised to contact an Ethics Counselor regarding specific gift inquiries.

8. OUTSIDE ACTIVITIES

Employees are entitled to independence in their personal or outside activities, subject to their duty of loyalty to the Smithsonian. In conducting any outside activity, employees must ensure that the activity:

- is compatible with the full and proper discharge of their Smithsonian employment;
- cannot reasonably be construed by the public as an official action of the Smithsonian;
- will not impair the employee's mental or physical capacity to perform assigned Smithsonian duties in an acceptable manner; and
- will not create a conflict of interest or the appearance of a conflict of interest for the employee.

In addition to satisfying these general requirements, *all* "outside" activities as defined by this section must:

- receive OGC clearance to the extent required. Note: Separate clearance requirements apply to outside activity participation for Covered Executives versus general employees;
- be carried out on an employee's personal time (including annual or unpaid leave), apart from his or her Smithsonian duty hours; and
- be arranged (travel logistics and otherwise) independently of the Smithsonian.

(a) Definitions

For purposes of these standards, the following definitions apply:

- **Compensated:** for purposes of this directive, the term "compensated" refers to all forms of monetary remuneration, including but not limited to honoraria, fees, salaries, and royalties. This term does not include reimbursements for travel expenses.
- **Outside Activity:** any activity an employee engages in, whether for compensation or on a volunteer basis, which is not an official duty or assignment of the employee's Smithsonian position.

Note: Work performed by an employee for another Smithsonian unit, apart from his or her regular duties, is only considered an outside activity for the purpose of these standards if the work is *unrelated* to the employee's areas of expertise.

- **Related Outside Activity:** an outside activity that is similar or related to the employee's Smithsonian responsibilities or area of expertise.
- **Unrelated Outside Activity:** an outside activity that is not similar or related to an employee's Smithsonian responsibilities or areas of expertise.

(b) Related Outside Activities, Compensated or Uncompensated

(1) **Related, Compensated Outside Activities.** OGC Clearance Required. All employees must seek clearance from their supervisor, Unit Director, and an Ethics Counselor for all compensated outside activities which are or may be similar or related to their Smithsonian employment (including but not limited to consulting, teaching, lecturing, or writing about the Smithsonian, its scholarship and research, programs, and collections). Receiving additional compensation from any outside source for work within the scope of an employee's Smithsonian duties and responsibilities may violate federal law. See 18 *United States Code* (U.S.C.) § 209.

The Ethics Counselor, in determining whether to clear a related outside activity, will consider the following (non-exhaustive) factors:

- Whether the activity is undertaken as part of the employee's official duties. Note: this determination is often made in consultation with the employee's supervisor;
- Whether the circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his or her official position rather than the employee's independent expertise on the particular subject matter;
- Whether the invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, 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; and
- Whether the information conveyed through the activity draws substantially on ideas or official data that involve information not available to the public.

(2) **Related, Uncompensated Outside Activities.** OGC Clearance Required Only in Limited Circumstances.

Note: Related activities performed on official time that involve compensation paid directly to the Smithsonian are not considered “outside activities” for purposes of this policy and require only unit approval. No OGC clearance is required for such activities.

- **General Participation.** Employees may be encouraged to participate on a voluntary or uncompensated basis in the activities of organizations that are related to or support the employee’s Smithsonian position or areas of expertise. Participation in such outside professional activities may be permitted on official time *with unit approval* if such activities relate to an employee’s Smithsonian duties, are an appropriate use of the employee’s time, do not operate to the principal benefit of an outside party, and are determined to be in the interests of the Smithsonian. Employees do not need to seek approval from an Ethics Counselor to participate in such *uncompensated*, related outside activities approved by their supervisor and Unit Director unless the activity involves certain types of Board Service.
- **Board Service.** See subsection (d) below.

(c) Unrelated Outside Activities, Compensated or Uncompensated

(1) Employees

General Rule. Employees who are *not* Covered Executives may participate during *off-duty* hours in the affairs of charitable, educational, religious, public service, and other voluntary organizations, or engage in unrelated outside activities for free or for pay. Employees may not engage in such activities, solicit for, or promote such organizations during Smithsonian duty hours, or attempt to use in any way the name, reputation, property, or facilities of the Smithsonian for the benefit of such activities or organizations. This prohibition includes the use of the employee’s official title or Smithsonian affiliation in a manner not authorized by subsection (e) below in connection with unrelated outside activities.

Clearance Requirement. Employees who are Covered Executives *are not* required to seek approval from an Ethics Counselor to participate in unrelated outside activities, whether compensated or uncompensated, unless they plan to use their Smithsonian title in connection with the activity. See subsection (e) below.

(2) Covered Executives

General Rule and Clearance Requirement. Covered Executives may participate during *off-duty* hours in the affairs of charitable, educational, religious, public service, and other voluntary organizations, or engage in unrelated outside activities, but they must receive OGC clearance if they are:

- a. Receiving compensation **OR**
- b. Using their Smithsonian titles **OR**
- c. Engaging in an outside activity that involves any type of board service.

Covered Executives may not under any circumstances engage in such activities, solicit for, or promote such organizations during Smithsonian duty hours, or attempt to use in any way the name, reputation, property, or facilities of the Smithsonian for the benefit of such activities or organizations.

(d) Board Service

(1) Non-Profit Boards (Governing/Fiduciary). Employees may only serve in an official Smithsonian capacity on a governing/fiduciary board of an outside organization if (1) appointed by the Secretary of the Smithsonian, or designee; or (2) they receive supervisor approval, Unit Director approval, and a determination by the General Counsel that, based on the official duties of the employee, there is no likelihood of a conflict of interest or impairment of the duty or loyalty to the Smithsonian.

- To the extent the Smithsonian is mandated by federal statute to designate a board member to represent the Institution, such designation may only be accomplished by Secretarial appointment.
- Only an employee designated as an official representative of the Smithsonian to an outside governing/fiduciary board pursuant to Secretarial appointment will be eligible for indemnification pursuant to the Board of Regents' indemnification resolution and guidelines.

(2) Non-Profit Boards (Advisory)

- Employees. Employees who are not designated by the Secretary as a Covered Executive may only serve in an official Smithsonian capacity on an advisory board of an outside organization with supervisor and Unit Director approval. General Counsel approval is not required for general employee advisory board service but employees are reminded of (1) their duty of loyalty vis-à-vis the Smithsonian and their inability to represent the interests of the Smithsonian and the outside entity vis-à-vis the other and (2) their duty to consult with an Ethics Counselor to discuss any potential conflicts of interest that may arise in connection with their outside board service.

- **Covered Executives.** Covered Executive employees *are* required to seek supervisor and General Counsel approval to serve in any capacity (official or non-official) on a nonprofit advisory board.
- (3) **For Profit Boards.** Covered Executives are prohibited from serving on for profit boards. All other Smithsonian employees must treat for profit board service as a compensated outside activity whether the position is paid or unpaid and seek the requisite approvals.

(e) Use of Smithsonian Name or Official Title

- (1) **Unpaid Nonprofit Activities.** With two exceptions, employees may generally use, or permit the use of, their official Smithsonian title or allow reference to their association with the Smithsonian for the limited purpose of professional identification in connection with their unpaid outside professional activities on behalf of or in association with a nonprofit entity. Exceptions are:
- a. Any such use of an employee's official title or association with the Smithsonian beyond mere professional identification, that is, in a manner that uses the title in other than resume form or that gives the impression the individual is acting in his or her Smithsonian capacity (e.g., use in a byline). Such use requires advance clearance by the employee's supervisor, Unit Director, and an Ethics Counselor.
 - b. Use of a Covered Executive's title (even for mere professional identification) in connection with an event or activity that involves fund raising for a third party. Such use requires advance clearance by the Covered Executive's supervisor, Unit Director (if applicable), and an Ethics Counselor.
- (2) **Paid and For Profit Activities.** Clearance from an employee's supervisor, Unit Director, and an Ethics Counselor is required *in advance* of an employee's use of his or her official Smithsonian title in connection with paid or for profit activities. "Paid or for profit activities" includes:
- a. Outside professional activities on behalf of or in association with a nonprofit organization for which the employee will receive compensation; and
 - b. Outside professional activities on behalf of or in association with a for profit or commercial entity, whether or not the employee will receive compensation for the activity.

No uses of a Smithsonian title in connection with paid or for profit activities will be cleared if they give the appearance that an employee's outside activities are endorsed by the Smithsonian or conducted under the auspices of the Smithsonian, or that the employee's Smithsonian position is being used for private gain.

9. PUBLICATIONS

- (a) Author Credits.** Clearance for use of any employee's official title is not required for standard author credits in connection with articles to be published in scholarly journals or other publications to which the employee contributed on official time. Uses of an employee's official title in connection with activities undertaken in a non-official capacity, such as drafting forewords or endorsements for third parties, or drafting or contributing to articles or manuscripts in one's personal capacity, require advance clearance by the employee's supervisor, Unit Director, and an Ethics Counselor.
- (b) Disclosure of Funding Sources.** Smithsonian staff publishing research findings under their Smithsonian title must identify and disclose to all publishers, Smithsonian and non-Smithsonian alike, each source of funding above \$10,000 for any scholarly research that they conducted and relied upon in drafting the manuscript, whether or not any disclosure requirement is separately imposed by the manuscript's publisher, and whether or not the publisher will actually include the disclosed sources in the printed or digital/online publication. Smithsonian staff are responsible for the disclosure of their funding sources, but not those of others in co-authored works. Smithsonian staff are not required to disclose new sources for publications that are reprinted or reproduced from the original publication, unless the work is updated or revised. To the extent that a publisher imposes a separate disclosure requirement, Smithsonian staff are obligated to further comply with the requirement as a matter of Smithsonian policy.

Note: Employees should seek the advice of an Ethics Counselor before agreeing to author as a private individual any publication that substantially draws on materials prepared in the course of carrying out their Smithsonian responsibilities.

10. POLITICAL ACTIVITIES

- (a) Federal *Hatch Act* Restrictions.** Employees may participate, as private citizens, in the activities of political groups. However, certain forms of participation in partisan political campaigns, particularly to the extent such participation is undertaken in an official employment capacity, is restricted by Smithsonian policy. See the [OGC Prism website](#) for further guidance on these rules.

(b) Advocacy-Oriented Policy Positions. Employees may take positions, as private citizens, on matters of public policy but in doing so may not purport to speak in their official Smithsonian capacity, or in a manner, through the use of their titles, which may be reasonably construed to represent that of the Smithsonian. See Section 8(e) for further guidance regarding “Use of Smithsonian Name or Official Title.”

11. ACTIVITIES RELATED TO COLLECTIONS

(a) Personal Acquisition of Collection Items

(1) **General Policy.** Employees may not acquire collection items in direct competition with the collecting activities of any of the collecting units of the Smithsonian. Direct competition with the Smithsonian may occur if an employee purchases a collection item that the employee knows, or would have reason to believe, that a Smithsonian collecting unit would be interested in acquiring if it were aware of the opportunity. In case of uncertainty regarding the Smithsonian’s interest in the collection item, the employee must consult with the appropriate curator or collecting Unit Director.

(2) **Clearance Requirements.**

Potential or Actual Conflict of Interest (Applicable to All Employees). In cases of a conflict of interest, or the appearance thereof, clearance must be obtained from an Ethics Counselor. In cases where the conflict cannot be resolved in other ways, clearance may require providing the Smithsonian with the opportunity to purchase or otherwise acquire the collection item or, if already acquired by the employee, a reasonable time for the Smithsonian to decide whether to obtain the collection item from the employee upon payment of the employee’s costs of acquisition.

Acquisition by Employee Responsible for Acquiring Collection Items. There is by definition an appearance of a conflict of interest when a Smithsonian employee who is responsible for acquiring collection items for Smithsonian collections wishes to personally acquire any collection item that may be within the scope of collections for which the employee is responsible. In that circumstance, the employee must obtain prior clearance from the employee’s Unit Director and from an Ethics Counselor before acquiring such a collection item. Employees of Smithsonian collecting units must further comply with specific policies on personal collecting that may be established in unit collections management policies.

Note. Clearance is not required for collection items received by employees as bequests, or for gifts which can be accepted pursuant to Section 6 of these standards.

(b) Dealing in Collection Items

Smithsonian employees directly responsible for acquiring collection items for Smithsonian collection shall not deal (i.e., buy and sell for profit or maintain an interest in any dealership) in collection items similar to those collected by the unit in which they are employed. Any other dealing by Smithsonian employees in collection items of the type collected by the Smithsonian requires prior clearance by the employee's Unit Director and an Ethics Counselor.

(c) Appraisals of Collection Items

Employees may not make estimates of monetary value (i.e., "appraisals") of collection items of the types collected by Smithsonian collecting units. Appraisals may be made solely for internal Smithsonian use, such as insurance valuations for loans.

(d) Authentication of Collection Items for Third Parties

Smithsonian staff may be asked by members of the public to exercise their expertise in examining collection items or images of collection items in order to ascertain their identity, age, quality, condition, or to give general information about the collection item's origin. All such authentications will be given only to the owner of the collection item or the owner's authorized agent, only for non-commercial purposes, and as consistent with the employee's collecting unit policies regarding authentications. All assistance or opinions, whether written or oral, shall be provided free of monetary or other compensation. A disclaimer statement approved by OGC must accompany all written statements.

12. RESTRICTIONS ON ACTIVITIES AFTER LEAVING SMITHSONIAN EMPLOYMENT

Smithsonian employees should be aware that conflicts of interest and the appearance of such conflicts may arise if they are involved with matters as employees that may benefit them financially after their Smithsonian service has ended. Such questions should be discussed with the employee's Unit Director and an Ethics Counselor. In particular, Covered Executives and those employees that meet OHR's definition of "senior level" should consult with an Ethics Counselor prior to leaving Smithsonian employment. The OHR definition of "senior level" includes the following employees:

- **Federal:** All employees in pay plans ST and SL, and non-graded employees in pay plan GG.
- **Trust:** All employees in pay plans SA, SZ, SY, and IL, and SB employees as designated by OHR.

(a) Lifetime Restriction on Certain Activities

A person shall not, at any time after ending employment at the Smithsonian, represent anyone other than the Smithsonian or the United States in connection with a particular matter (i) in which the Smithsonian is a party or has a direct interest; (ii) in which the person participated personally and substantially while employed by the Smithsonian; and (iii) which involved a specific party or specific parties at the time of such participation. See 18 U.S.C. § 207 (a)(1).

(b) One-Year Restriction on Certain Activities by Senior-Level Employees

A senior-level employee shall not, for one year after his or her Smithsonian employment has ended, knowingly make any communication to or appear before a Smithsonian employee on behalf of anyone other than the United States in connection with any matter in which he or she seeks official action by that Smithsonian employee. See 18 U.S.C. § 207 (c).

A senior-level employee shall not, for one year after his or her Smithsonian employment has ended, represent, aid, or advise a foreign entity with the intent to influence any U.S. Government official or employee. Certain exemptions may apply. See 18 U.S.C. § 207 (f).

(c) Two-Year Restriction on Other Activities

A person shall not, for two years after his or her Smithsonian employment has ended, knowingly make any communication to or appear before a Smithsonian employee on behalf of anyone other than the United States, in connection with a particular matter (i) in which the Smithsonian or the United States is a party or has a direct and substantial interest, (ii) which was under the person's official responsibilities (but in which that person did not participate personally and substantially) during the last year of his or her Smithsonian employment, and (iii) which involved a specific party or specific parties at the time it was so pending. See 18 U.S.C. § 207 (a)(2).

(d) Buyout Restrictions

Any employee who receives a buyout under the Voluntary Separation Incentive Payments ("VSIP") authority under the Smithsonian Facilities Authorization Act of 2003 may not be re-employed by the federal Government or the Smithsonian for five (5) years after separation unless the employee repays the entire payment or the federal Government or the Smithsonian waives the repayment due to exceptional recruiting difficulties. (This also applies to Smithsonian federal employees being re-employed in trust fund positions.) The employee also may not enter into a personal services contract with the Smithsonian on either a trust or federal basis for five (5) years after separation.

In order to perform work for the Smithsonian or another part of the federal Government on a contract basis within five (5) years after a VISP separation, the employee must receive confirmation from the Office of Human Resources (OHR), the Office of Contracting and Personal Property Management (OCon&PPM), and an Ethics Counselor that the contract is not a “personal services contract” as contemplated by the rule. These units will evaluate whether the contract involves work that an employee would otherwise perform and consider several factors, including but not limited to whether: (1) the contract involves routine contractor work, i.e., the Smithsonian has contracted for the work in the past; (2) the work would be done on site using SI facilities and resources; and (3) the work would be supervised by Smithsonian employees. Note: the contract may still involve personal services even if the contract is between the Smithsonian and an outside third party or company for whom the former employee works.

13. PERSONAL CONFLICTS OF INTEREST

(a) Prohibition on Allowing Personal Outside Financial Interests to Affect Official Actions

- (1) **General Principle.** An employee shall not participate in an official capacity in any matter in which, to the employee’s knowledge, the employee or the employee’s spouse, minor child, business partner, or a person or organization with which the employee is connected has a financial interest. See 18 U.S.C. § 208.
- An employee is considered to have a connection to a person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, or with an organization (for profit or nonprofit) in which the employee is serving as officer, director, trustee or board member, general partner, or employee.
 - An employee is not considered to have a disqualifying financial interest by virtue of an ownership of shares of a widely diversified mutual fund, or of an ownership of an insignificant number of shares in a corporation.
- (2) **Smithsonian Contracts.** A contract action in which an employee participates that involves any of the following parties may implicate the conflict of interest principle set forth above:
- Another Smithsonian employee;
 - A relative of a Smithsonian employee;

- An outside business partner of a Smithsonian employee;
- An employee of a federal agency; and/or
- A member of any Smithsonian board.

Any contract action involving a Smithsonian employee and these parties must be referred to OCon&PPM and an Ethics Counselor for review and signature through the use of the OCON 100 Form. In consultation with an Ethics Counselor, OCon&PPM may recommend that the contract action be terminated, that the employee recuse him or herself from participating in the contract, or consider (at the request of the employee) a conflict waiver allowing the employee to carry out his or her duties with respect to the contract.

Waivers under this section require the approval of the employee's supervisor, the Unit Director, the General Counsel, and the Under Secretary for Finance and Administration/Chief Financial Officer (USF&A/CFO).

(b) Overall Duty of Loyalty

Employees are reminded that they owe an overall duty of loyalty to the Smithsonian as detailed in Section 1. Even where a Smithsonian employee does not have a financial interest in an outside entity with which the Smithsonian does business, the Smithsonian employee must not use his or her employment for private gain, give preferential treatment to any person or company for any reason irrespective of personal financial interest, or fail to make impartial decisions on the Smithsonian's behalf.

(c) Financial Disclosure Requirements

- (1) **Annual "Confidential Financial Disclosure Report" (Form SI-1085)** (hereafter the "Report") requires an employee to provide information that may reveal a potential or actual conflict of interest. The criteria for determining who must file the Report are based on an employee's position with the Smithsonian or on the employee's authority to act on behalf of the Smithsonian.
- (2) **Mandatory Filers.** This Report must be completed by persons with significant authority to approve or review commitments of Smithsonian resources which may benefit individuals, businesses, or other organizations outside the Smithsonian. The categories of mandatory filers are as follows:
 - All Covered Executives.

- All Unit Directors not otherwise designated as Covered Executives.
- Employees identified by OCon&PPM with the authority to approve contracts, purchases, grants or the commitment of resources valued at \$100,000 or greater.
- All Principal Investigators (PIs) and Co-Principal Investigators (Co-PIs) identified by the Office of Sponsored Projects (OSP) that have active awards during the calendar year for each annual filing (Note: the thresholds set forth in the Report may differ from what is otherwise required for PIs and Co-PIs receiving Public Health Service [PHS] and/or National Science Foundation [NSF] funding); and
- Any other individual identified by his or her Unit Director in consultation with OGC, who has official responsibilities of a nature that authorizes him or her to commit or oversee significant Smithsonian resources, facilitate business relationships, and/or handle confidential or sensitive information.

(3) Timing of Filing.

- **Annually.** All mandatory filers must file Reports annually with OGC.
- **New Employees.** New Smithsonian employees in positions requiring reporting must file Reports within 30 days of assuming their positions and provide information for the prior 12-month period regardless of whether that period aligns with the most recent calendar year.
- **Assumption of New Duties.** Existing Smithsonian employees who transfer to other Smithsonian positions that require reporting under this section must file Reports within 30 days of assuming their positions and provide information for the prior 12-month period regardless of whether that period aligns with the most recent calendar year.
- **At Time of Proposal.** PIs and Co-PIs may be required to file additional Reports during the calendar year to reflect any changes to their most recent filings at the time they submit proposals to PHS.
- **Upon Termination of Employment.** Annual filers who terminate their employment with the Smithsonian must submit updated Reports covering the period of time between their most recent filings and their separation dates.

- (4) **Process.** OGC and OHR, with input from Unit Directors as requested, will coordinate to flag and notify required filers through the Institution's automated systems.
- (5) **Sanctions.** Employees may be subject to disciplinary action for failure to file Reports on time or for failing to accurately disclose required information. Sanctions may range from a formal letter of reprimand placed in an employee's file up to and including dismissal.
- (6) **Protests with Respect to Filing Reports.** An employee who believes that he or she has been improperly designated as a mandatory filer is encouraged to discuss the matter with an Ethics Counselor, and, if not satisfied, may request that the designation be reconsidered by his or her Unit Director in consultation with the General Counsel. If still unsatisfied, the employee may appeal his or her designation to the USF&A/CFO or designee for a final decision.
- (7) **Effect of Filing a Financial Report.** The filing of a required Report and the disclosure of certain financial or other interests do not in any way exempt the employee from full compliance with these standards, or from any disciplinary action as a result of noncompliance. For example, the listing of outside employment does not relieve the employee of the obligation to seek consultation, and clearance if necessary, to ensure that the employment does not involve a conflict of interest or the appearance of a conflict of interest.
- (8) **Review of Financial Reports.** Ethics Counselors shall review all Reports filed annually. When this review indicates a conflict between the employee's financial interests and the employee's duties for the Institution, the Ethics Counselor will bring the conflict to the attention of the employee and attempt to resolve the situation. It is the duty of the employee to cooperate with the Ethics Counselor and to provide such additional information that the Ethics Counselor deems necessary to resolve an issue that poses a potential conflict. If the conflict cannot be resolved after discussing it with the employee, the Ethics Counselor shall forward a written report on the conflict to the employee's supervisor or Unit Director, and if necessary, the USF&A/CFO. The USF&A/CFO, or designee, shall decide what measures are required to resolve the conflict or appearance of conflict, including any remedial or disciplinary action.

(d) Conflict of Interest Declarations

All Smithsonian employees who are not required to fill out a Confidential Financial Disclosure Report will be required to sign a Conflict of Interest Declaration ("Declaration"), unless they are designated by OGC as exempt from this requirement. OGC may designate as exempt

employees whose authority and duties are such that there is little to no risk that any outside, personal interests of the employees will conflict with their Institutional responsibilities. To illustrate, facilities personnel whose outside interests are unlikely to present a conflict with their responsibilities and who are without computer or network access may qualify as exempt from this requirement. OGC will annually publish categories of exempt personnel on its website. The Declaration asks an employee to certify that he or she has read this policy, has had the opportunity to discuss any potential conflicts of interest with an Ethics Counselor, and to the best of his or her personal knowledge has complied with his or her obligations under these standards of conduct.

14. SPONSORED TRAVEL

The Smithsonian may accept travel benefits (e.g., transportation, lodging, meals, and related expenses), as in-kind or by reimbursement to the Smithsonian, from non-federal sources (such as for profit and nonprofit entities, or state, local, and foreign governments and governmental entities) for Smithsonian employees to travel in their official capacities to attend meetings, conferences, seminars, symposia, and other similar functions. These reimbursements are often referred to as “sponsored travel.”

(a) Procedures for Approval of Reimbursements by Non-federal Sources

- (1) **General Sponsorship Rule.** Smithsonian employees shall obtain clearance from an Ethics Counselor prior to accepting such support from:
- **An Individual (under limited circumstances).** Note: OGC clearance is not required if the sponsoring individual is (a) a family member or friend with no association (or contemplated association) with the Smithsonian, or (b) a donor who is underwriting travel expenses for a development event. In these circumstances, clearance must still be secured through supervisory channels, and any travel expenses that may be considered excessive or “lavish,” e.g., private plane travel, must be separately submitted to OGC for approval.
 - **A For Profit Entity.** This includes, without limitation, all for profit entities without limitation.
 - **A Foreign Government or Governmental Entity.** “Foreign governmental entities” include foreign universities, museums and research organizations that are largely funded by their governments, and multi-lateral or multi-national organizations such as the United Nations.

Written approval of an Ethics Counselor must be obtained prior to completion of the travel authorization process, and should be requested at least two (2) weeks in advance of the travel. Clearance requests that are received late or *ex post facto* will not be approved but OGC may elect to evaluate for audit purposes or otherwise determine whether there is a conflict with the Smithsonian having accepted the sponsorship.

Reimbursements for travel expenses by individuals, for profit entities and foreign government and foreign entity sources as described above must be made payable directly to the Smithsonian. Employees may accept in-kind benefits such as an airline ticket acquired by the outside source in the name of the Smithsonian employee, subject to prior clearance by an Ethics Counselor, but Smithsonian employees are not permitted to accept cash, checks, or similar reimbursements given directly to the employee from these sources unless they receive separate authorization pursuant to the Direct Reimbursement Policy set forth below in subsection (2).

Note: sponsored travel that is expressly identified and authorized in an underlying agreement, e.g., a gift agreement, grant, or contract, does not require additional OGC clearance.

- (2) **Additional Authorization Required for Direct Reimbursements.** Travel expenses may be paid directly to the employee only in accordance with the following processes:
- a. **Reimbursements paid by checks made out to the individual from sponsors that are U.S. state and local governments and nonprofit entities**, i.e., United States charitable organizations under Internal Revenue Code section 501(c)(3)b, require the following:
 - i. Complete a Direct Reimbursement Clearance Form, available on the [OGC Prism website](#), which includes securing signatures from a supervisor, Unit Director, and Ethics Counselor; and
 - ii. Attach a copy of the form to the travel authorization documents.
 - b. **Reimbursements paid by checks made out to the individual from sponsors that are foreign sponsors (including foreign governments, foreign entities, and foreign nonprofits) OR cash reimbursements from any type of sponsor** must qualify for an exceptional waiver, and require the following:
 - i. Written confirmation from the sponsor that it cannot under any circumstances reimburse the Smithsonian versus the individual employee, and in the case of

a cash reimbursement, demonstrate why the sponsor cannot pay the individual through a check reimbursement.

ii. **[For foreign sponsors (governments, entities, and nonprofits) only]**

Demonstrate that the reimbursement falls into one of the following two categories:

1. The reimbursement value is less than the FGDA threshold. This threshold is currently \$375.
 2. The reimbursement is more than the FGDA threshold, and covers only expenses for travel that takes place entirely outside of the United States, i.e., a gift cannot cover the cost of a flight that either departs from or terminates in the United States.
- iii. Complete a Direct Reimbursement Special Authorization Form, available on the [OGC Prism website](#), which includes securing signatures from a supervisor, Unit Director, an Ethics Counselor, and the USF&A/CFO.
- iv. Attach a copy of the form to the travel authorization documents.

NOTES:

- If cash is unexpectedly received at the beginning or end of a trip, it must be handled in the manner prescribed by the Smithsonian [Travel Handbook](#), and the Direct Reimbursement Waiver must be completed *ex post facto*.
- Direct Reimbursements are 100 percent audited.

(b) Limitations on Reimbursements for Travel on Smithsonian Business

- (1) **General Limitation on Excessive or Lavish Benefits.** Employees may not be reimbursed, nor may payments be made on their behalf, for personal living expenses, gifts, entertainment, or other personal benefits that could be considered excessive or lavish, meaning costs that exceed what is a reasonable amount under the facts and circumstances.
- (2) **Spousal Travel.** Spousal or dependent family member travel must be approved by the General Counsel, and it is approvable only in extraordinary cases upon demonstration that the travel meets a bona fide business purpose of the Smithsonian. Exceptions will only be granted in those instances where the spouse or

dependent family member conducts official and substantive business-related functions on behalf of the Smithsonian. Considerations, including but not limited to the following, may help determine whether or not certain spousal or dependent family member travel is approvable:

- Whether the duties and responsibilities performed by the spouse or dependent family member would be performed by an additional Smithsonian employee, not already included in the travel activity, if the spouse or dependent family member does not attend the event.
- If the spousal or dependent family member's travel costs are underwritten by a sponsor, whether the Smithsonian would pay for that individual's travel costs absent the sponsorship.
- Whether the spouse or dependent family member will attend business-related meetings or events, or is asked to independently participate at business-related meetings or events to advance the Smithsonian's mission.

A memorandum must be prepared for Ethics Counselor approval demonstrating that these standards have been met.

Note: Spouses or dependent family members may accept food and incidental benefits of a nominal value.

Note: Overseas Tour Renewal Agreement Travel (OTRAT) is separately addressed by Chapter 591, Allowances and Differentials, in SDs [212](#) and [213](#), and in the [Allowances and Differentials Handbook](#).

(3) **Private Plane or Chartered Air Travel.** Private or chartered plane travel is approvable in limited and exceptional cases. Private or chartered plane travel will only be approved in those instances where the travel is not excessive or lavish, meaning that the costs do not exceed a reasonable amount under the facts and circumstances, and does not raise a conflict of interest or an appearance of a conflict of interest. Considerations including but not limited to the following may assist in determining whether or not private or chartered plane travel is approvable:

- The trip is serving a bona fide business purpose and advancing the mission of the Smithsonian.
- The plane/flight is already scheduled to make the anticipated trip regardless of whether the Smithsonian employee(s) are passengers.
- The availability of reasonable commercially available alternative flights.

A memorandum must be prepared for Ethics Counselor approval that demonstrates that these standards have been met. A sample memorandum is available on the [OGC Prism website](#).

15. USE OF SMITHSONIAN PROPERTY

(a) Prohibition on Private Uses

Employees shall not directly or indirectly make use of or permit the use of Smithsonian property of any kind for other than officially approved activities. Smithsonian property includes all Smithsonian assets, tangible and intangible, such as funds, facilities, equipment, supplies, staff time and services, intellectual property rights, and information that is unavailable to the general public.

Incidental and occasional personal use of Smithsonian computer and communications systems is permitted, provided that such use does not interfere with the conduct of Smithsonian business and is consistent with Smithsonian policies on the use of such systems. See [SD 931, Use of Computers, Telecommunications Devices and Networks](#), which is available on Prism, for more information on this policy.

(b) Ownership of Data and Materials Prepared by the Institution

All work products, including manuscripts, lectures, photographs, and all other materials prepared by employees within the scope of their employment, are the property of the Smithsonian. See 17 U.S.C. §§ 101, 105, and 201. Employees should seek the advice of an Ethics Counselor before engaging in any outside activity, including agreeing to author as a private individual any publication that substantially draws on materials prepared in the course of carrying out their Smithsonian responsibilities. See also Section 8, Outside Activities, of this directive.

16. RESTRICTIONS ON THE DISCLOSURE OF INFORMATION

Unless specifically authorized to do so, employees may not disclose any Smithsonian information which is of a confidential or privileged nature or any other information of such character that its disclosure might be contrary to the best interests of the Smithsonian. Such information may include private, personal, or business-related information furnished to the Smithsonian in confidence. Security and investigative data for official use only shall not be divulged to unauthorized persons or agencies.

17. FINANCIAL RESPONSIBILITY

An employee shall pay debts properly and in a timely manner, especially those imposed by law, such as federal, state, or local taxes. A debt is a just financial obligation acknowledged by the employee or reduced to judgment by a court. If there is a dispute between an employee and a creditor, the Smithsonian will not determine the validity or amount of the disputed debt.

All employees should be aware that the Smithsonian may be required by law under certain circumstances to attach employee wages or salary for enforcement and collection of consumer debts, child support, and alimony obligations. See [SD 116, *Claims Against Employee Wages*](#), which is available on Prism.

18. GAMBLING, BETTING, LOTTERIES, AND MONEY

(a) Gambling, Betting, and Lotteries

No employee shall participate, while on Smithsonian premises or while on duty for the Smithsonian, in any gambling activity, including, but not limited to, the operation of a gambling device, conducting or participating in a lottery or pool, involvement in a game for money or property, or selling or purchasing a numbers slip or ticket.

(b) Lending Money for Gain

While on duty, or while on Smithsonian premises, employees are forbidden to lend money to anyone under any arrangements for the purpose of monetary profit or other gain. This prohibition is not applicable to operations of a recognized employee credit union or employee welfare plan.

19. BORROWING MONEY FROM SUBORDINATES

No supervisor may borrow money from subordinates, nor request or require any subordinate to co-sign or endorse a personal note.

20. DISCLOSURE OF PERSONAL RELATIONSHIPS IN THE WORKPLACE

Close personal relationships in the workplace between supervisors and those they supervise increase the potential for apparent or actual conflicts of interest, perceptions of favoritism, and claims of sexual harassment. An employee engaged in a romantic, intimate, or sexual

relationship with either another employee whom he or she supervises (either directly or through others) or a person associated with the Smithsonian whom he or she supervises (either directly or through others) must promptly disclose the relationship to his or her supervisor. The supervisor will determine what changes or actions may be necessary to resolve the apparent or actual conflict in the best interests of the Smithsonian, including but not limited to adjusting reporting or working relationships.

21. APPEALS FROM DETERMINATIONS AND WAIVERS OF PROVISIONS OF THESE STANDARDS

(a) Request for Waiver

Employees may request that an Ethics Counselor waive application of these standards on the grounds that their enforcement would be contrary to the best interests of the Smithsonian or would cause undue hardship to an individual and would not violate applicable law. A request for a waiver, with a full description of the relevant facts, should be made to an Ethics Counselor.

(b) Appeal of Denial of a Waiver

An employee may appeal to the USF&A/CFO, or designee, a decision by an Ethics Counselor declining to waive these standards.

(c) Appeals from Ethics Counselor Rulings

Employees may appeal to the USF&A/CFO, or designee, rulings made by OGC interpreting these standards of conduct.

(d) Procedures for Appeals

An appeal, with full disclosure of the relevant facts, should be forwarded to the USF&A/CFO through OGC. To assist the Under Secretary's consideration of appeals from rulings of the Ethics Counselor, the USF&A/CFO may designate an individual to act on his or her behalf, or convene a committee to advise on the matter under consideration.

The employee may appear before the committee or the USF&A/CFO's designee, or make a written submission to the committee, the designee, or the Under Secretary. The determination by the USF&A/CFO, or designee, shall be final.

CANCELLATION: SD 103, February 13, 2012

INQUIRIES: Office of General Counsel (OGC)

RETENTION: Indefinite. Subject to review for currency 36 months from date of issue.
