

**From:** [Brazeau, Brian](#)  
**To:** [Emma Hutchinson](#)  
**Subject:** New Entrant Conflict of Interest Advice, Emma Hutchinson  
**Date:** Thursday, May 13, 2021 4:06:00 PM

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Hi Emma,

I have reviewed the Public Financial Disclosure Report that you recently submitted in connection with your new position at the Department of Energy. This e-mail is intended to provide you with information and call to your attention certain conflict-of-interest provisions applicable to you in your new position. Please read it in its entirety and contact me if you have any questions.

Additionally, **please notify our office once your appointment begins.** Your official submission of the 278 report is due within 30 days of the start date of your appointment. **Once you begin your appointment, please log in to <https://integrity.gov>, update the information if necessary, and submit your report.** Submitting the report after the deadline is subject to a \$200 late filing fee.

### **Participation Restrictions**

Section 208, title 18, United States Code, prohibits you from participating personally and substantially, as a Government employee, in any particular matter in which, to your knowledge, a financial interest is held by you, or your spouse, minor child, general partner, or organization in which you are serving as officer, director, trustee, general partner, or employee, or any person or organization with whom you are negotiating or have any arrangement concerning prospective employment. This participation prohibition not only covers such items as contracts, grants, cooperative agreements, and claims, but also includes legislation and policy-making that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. This prohibition is not on having a specific financial interest, but rather on the work that you may perform.

Further, section 2635.502 of the Standards of Ethical Conduct for Employees of the Executive Branch at title 5 provides that where you know that a person with whom you have a “covered relationship” is or represents a party to a particular matter involving specific parties, and where you determine that the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter, you should not participate in the matter unless you have informed your immediate supervisor of the appearance problem and received authorization to participate in the matter. For purposes of this restriction, a “covered relationship” includes:

- (i) A person, other than a prospective employer, with whom you have or seek a business, contractual or other financial relationship that involves other than a routine consumer transaction;
- (ii) A person who is a member of your household, or who is a relative with whom you have a close personal relationship;
- (iii) A person for whom 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;

- (iv) Any person for whom you have, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

- (v) An organization, other than a political party in which you are an active participant.

In addition, President Biden issued an Executive Order on January 20, 2021 (the Biden Ethics Pledge) that expands this “covered relationship” restriction to include all former employers and former clients for whom you personally provided services within a two year period prior to your appointment for a period of two years after your appointment. **Therefore, for two years after your**

**appointment you cannot participate in any particular matter involving specific parties, including regulations and contracts, related to your former employer or former clients, including Rockefeller Philanthropy Advisors, Inc. (Climate Nexus).**

### **Outside Activity Restrictions**

There are many statutory and regulatory restrictions applicable to outside activities. Before engaging in any outside employment (including volunteer work where you are providing professional services or serving on a board of directors) you must obtain written approval of your immediate supervisor, and this office. 5 C.F.R. § 3301.103. Further, with limited exceptions, you are prohibited from receiving compensation from any source other than the Government for teaching, speaking, or writing that relates to your official duties.

Ethics laws prohibit you from engaging in outside employment or any other outside activity that conflicts with your official duties. An activity conflicts with your official duties if it is prohibited by statute or it would require your disqualification from matters so central or critical to the performance of your official duties that your ability to perform the duties of your position would be materially impaired. These rules also prohibit you from using public office for your own personal gain or the private gain of friends, relatives, persons, or other entities with whom you are affiliated in a non-governmental capacity, and from using official time other than in an honest effort to perform official duties.

Further, there are criminal statutes that restrict Federal government employees from engaging in certain activities with regard to the Government. In general, 18 U.S.C. §§ 203 and 205, prohibit Federal employees from representing, with or without compensation, any party other than the United States with respect to a certain matter involving specific parties before the Executive or Judicial branches of Government in which the United States is a party or has an interest.

Representational services include written or oral communications and appearances made on behalf of someone else with the intent to influence or persuade the Government.

### **Misuse of Position**

Regulations exist providing for the proper use of official time and authority, and of information and resources to which you have access resulting from your role as a Federal employee. 5 C.F.R. §§ 2635.701 - 2635.705. These regulations bar the use of public office for private gain. This broad ban prohibits the following: use of your title, position, or authority for your own private gain, or the private gain of friends, relatives, clients, or anyone with whom you are affiliated in a non-Governmental capacity (including nonprofit organizations in which you serve as an officer, member, employee, or persons with whom you have or seek an employment or business relationship); use of your title, position, or authority to coerce or induce another person to provide any benefit to yourself or any person identified above; use of any non-public information to further your private interests or those of another, or disclosing confidential or non-public information without authorization; and use of Government property and time for unauthorized purposes.

### **Gifts**

As a Federal employee, you may not accept gifts from a prohibited source or gifts offered because of your official position as a DOE employee. A prohibited source is considered an entity who does business with the Department, is affected by the work of the Department, or has an interest in the work of the Department. There are certain exceptions to this rule. For example, small food items, that are less than a meal, such as coffee, are not considered a gift. In addition, the Biden Ethics Pledge prohibits you from accepting gifts from registered lobbyists or lobbying organizations during your service as an appointee. There are very few exceptions to this additional restriction. You should

contact this office before accepting a gift from a prohibited source or one that is offered because of your official position.

### **Political Activity Restrictions**

The Hatch Act on Political Activity (Hatch Act) limits the political activities of Federal employees. 5 U.S.C. §§ 7321-7326. Generally, Department employees are permitted to participate in partisan political activities. However, as a Federal employee, you are prohibited from engaging in political activity while on duty; on government-paid travel; in any room or building occupied in the conduct of government business; wearing a uniform or official insignia identifying the office or position of the employee; or using any vehicle owned or leased by the government. Further, you may not solicit, accept, or receive political campaign contributions on behalf of a political candidate or political party. You also cannot use Government computers, phones, and similar equipment for partisan political activity. Please contact this office for more detailed advice before engaging in partisan political activity.

### **Periodic Transaction Report (OGE Form 278T)**

A periodic transaction report is only required to be submitted to report the purchase, sale, or exchange of stocks, bonds, options or futures (if the amount of the transaction is greater than \$1,000) by you, your spouse or dependent children. These reports must be filed: (A) within 45 days of the transaction, or (B) within 30 days of the date you learn of the transaction, whichever occurs earlier. There is a \$200 late filing fee on these reports. The periodic transaction report is not required to be submitted to report the purchase, sale, or exchange of mutual funds, real property, or deposit accounts. Periodic Transaction Reports must be filed using Integrity. Employees who have previously used OMB MAX should use their MAX user ID and password. On the Integrity landing page, <https://integrity.gov>, click "Login to Integrity." Click "Submit" and you should see a filer "My Tasks" dashboard. To start a 278-T, scroll down to the "My Tools" area and click on "278-T." That will display the report tool with brief instructions in a new window where you can enter your information and submit your report.

This email provided a general overview of the conflict of interest statutes and regulations that apply to you as an employee at the Department of Energy. Please remain alert for any potential conflicts that may arise and do not hesitate to contact this office at [standardsofconduct@hq.doe.gov](mailto:standardsofconduct@hq.doe.gov) with any questions related to these restrictions.

Brian Brazeau

Attorney-Advisor

U.S. Department of Energy

Office of General Counsel

[brian.brazeau@hq.doe.gov](mailto:brian.brazeau@hq.doe.gov)