

Partnership & Ethics Fact Pattern

Fannie Federal employee has just been assigned to be the Partnership liaison to the Northwest region of Fannie's agency. Her office is in Portland, Oregon Fannie is super excited because this is an area she knows she will excel in...bringing people together on common ground. Fred Fed, Fannie's supervisor, tells Fannie that 20 people competed for her new job. Fred says, "Lots of people want the job because all the "perks" that come with the job." Fannie thinks to herself, "perks? What perks?" Before Fannie can ask Fred, he gets a phone call and Fannie's phone at her desk rings too. Fred walks out of Fannie's cubicle telling her they will chat later. Fannie picks up her phone.

The other person on the line is the National Association Foundation (NAF), one of the Northwest region's biggest partners that Fannie will be working with. Patty Partner introduces herself to Fannie and invites Fannie to a happy hour/social to meet the rest of the NAF team. Patty tells Fannie the social is at the Ritz Carlton and NAF is hosting. Patty tells Fannie to just speak to ethics counselor, the cost per person is \$50, and your ethics counselor can WAG it. Can Fannie accept the gift under a WAG? If not, is there another way that Fannie can attend and accept the gift?

Answer: Based upon the information, the invitation to attend the reception does not fall under the WAG gift exception. Since the guests at the event will be Fannie and employees of NAF there will not be a diversity of views or interests represented, it will only be Fannie representing her agency and NAF employees representing NAF. See 5 C.F.R. §2635.204(g)(2). If Fannie was asked to address everyone at the reception, as in, Fannie was given time to speak at a podium or was introduced and was asked to speak to all about her agencies' program, she "may" be able to accept the invitation under 5 C.F.R. § 2635.204(g)(1). However, the best response to this invitation is to offer to visit NAF at their office space and meet with individuals that Fannie will be working with or Fannie could pay for the cost of the reception. Regardless, this invitation MUST be vetted by your Ethics Counselor.

The Northwest Horticulture Association is holding an annual conference regarding the crisis on pollinators. The Association has invited Fannie to come and speak regarding what her Agency and partners are doing to save the pollinators. The conference is 3 days and costs \$500 US. The Association has offered to pay for Fannie's travel cost and waive the registration fee. Can she accept?

Answer: Based upon the information provided, Fannie could accept the gifts of travel IF she will be in on official travel orders. She may accept under 31 U.S.C §1353 (41 C.F.R. § 304). However, if the conference is local, Fannie may NOT accept under 31 U.S.C §1353 (41 C.F.R. § 304) nor can she accept any of the travel costs (no hotel, no taxi, no rental car) but she may under 5 C.F.R. § 2635.204(g)(1) accept the waiver of the registration fee for the day she is speaking. If Fannie desires to attend the other "non-speaking" days, the Government will need to pay for her attendance. Regardless, this invitation MUST be vetted by your Ethics Counselor.

A partner, Pete Partnership, comes by to meet Fannie at her office. Pete brings by a \$10 mug with his organization logo, a \$5 pen and \$35 long sleeve t-shirt. Can Fannie accept?

Answer: Pete is a Prohibited Source and the gifts given to Fannie must be reviewed under Gifts from outside source. There is the 20/50 rule which would allow Fannie to accept a gift with a fair market value of \$20 dollars or less and is limited of accepting no more than \$50 dollars a calendar year from the same Prohibited Source. Remember to count employees from the same company as ONE Prohibited Source. See 5 C.F.R. § 2635.204(a). Therefore, Fannie could personally accept the mug and pen which would be a total of \$15 dollars but cannot accept the \$35 dollar t-shirt since the t-shirt costs more than \$20 dollars. Fannie could personally purchase the t-shirt. Another option would be if Fannie's Agency has gift acceptance authority, Fannie could accept all gifts on behalf of her Agency. However, an appropriate gift to accept on behalf of the Agency would be a truly valuable item, a piece of art, a crystal vase, a Pendleton Indian blanket, etc. Rarely would it be appropriate to accept a t-shirt, pen and mug under a Gift to Agency statute. You are encouraged to consult your Ethics Counselor regarding gifts until you feel you understand the gift rules very well. Many agencies require acceptance of gifts to agencies to always be vetted via the Ethics office and/or General Law.

Fannie is responsible for managing all the cooperative agreements for partners in the Northwest region. NAF has a summer internship program for high schoolers. Patty who has been working with Fannie for over a year now knows that Fannie's daughter is really interested in science. Patty calls Fannie and tells her, just say the word, and one of the internships will be given to Fannie's daughter. Any issues?

Answer: Certainly, if Fannie personally and substantially works on NAF cooperative agreements (a specific party matter), her decisions will have a direct and predictable effect on NAF's financial interest. But the real question is whether Fannie's personal and substantial involvement will have a direct and predictable effect on her daughter's internship (paid or unpaid) which is imputed to Fannie as her own financial interest?

See 5 C.F.R. 2635.403(c)(2), "The term financial interest includes service, with or without compensation, as an employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee." The fact that Fannie's daughter has an internship by the organization that may be affected by particular matters in which Fannie has been assigned to participate would not, in and of itself, require Fannie's disqualification under section 208. 18 U.S.C. § 208 (208)

However, a disqualification would be necessary if approving/disapproving the cooperative agreements could affect the ability or inclination of NAF to give Fannie's daughter the internship. * Beyond section 208, 5 C.F.R. § 2635.501, has procedures requiring employees to take appropriate steps to avoid the appearance of loss of impartiality in the performance of their official duties. Under these administrative rules, Fannie knows that her working on the cooperative agreement is more than likely to have a direct and predictable effect on her daughter's financial interest (*the financial interest) who is a member of Fannie's household and where the Fannie determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question her impartiality in the matter, Fannie should not participate in the matter unless she has informed the agency designee of the appearance problem and received authorization from the agency designee. See 5 C.F.R. § 2635.502(a).

Another issue could be 18 U.S.C. § 201 (201), bribery or illegal gratuity under 201. Most individuals when thinking of 201, think quid pro quo which requires an agreement between the recipient and the giver that the recipient will do or not do an official act in receipt of something of value from the giver. However, an illegal gratuity can be the mere reward for a past act or a future act. Fannie's daughter's acceptance of the internship could be a 201 issue. Again, this is why it is so crucial to consult your Ethics Counselor.

Fannie has been in the job now for 6 years and has been with the Federal Government for 28 years. She is thinking about whether she wants to retire-retire or find a job in the nongovernment sector. She mentions this to Pete Partnership who promptly states they would "LOVE" to have Fannie on their team, with Fannie's skill sets and contacts she would be a huge asset to their organization. Fannie is flattered but is not ready to leave her job right now. Maybe down the road they could talk about a position.

Answer: Regardless of Fannie's desire to be seeking employment, her conversation with Pete has placed her in a seeking employment status which would require her to recuse herself from working on any particular matters that may affect the financial interests of Pete's organization. This could include a regulation and/or policy that targets an identifiable and discrete class that includes Pete's organization. See 5 C.F.R. §2635.603. Fannie must also be careful that she is not considered to be negotiating with Pete because if she did not recuse herself from working on particular matters affecting the financial interest of Pete's organization she could be in violation of a criminal statute. 18 U.S.C. § 208. Seek the advice of your Ethics Counselor.