



VIRGIN ISLANDS PORT AUTHORITY

**EMPLOYEES STANDARDS OF
ETHICAL CONDUCT**

Adopted June 20, 2018

STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE VIRGIN ISLANDS PORT AUTHORITY

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Subpart A—General Provisions

§ 101 Basic obligation of public service.

(a) Public service is a public trust. Each employee has a responsibility to the Virgin Islands Port Authority (“VIPA”) and its citizens to place loyalty to the Constitution, the Revised Organic Act of 1954, and laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the VIPA, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

- (1) Public service is a public trust, requiring employees to place loyalty to the United States Constitution, the Revised Organic Act of 1954, and laws and ethical principles above private gain.
- (2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (3) Employees shall not engage in financial transactions using nonpublic VIPA information or allow the improper use of such information to further any private interest.
- (4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- (5) Employees shall put forth honest effort in the performance of their duties.
- (6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind VIPA.
- (7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve VIPA's property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official VIPA duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal or Territorial taxes—that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

§ 102 **Definitions.**

The definitions listed below are used throughout this part. Additional definitions appear in the subparts or sections of subparts to which they apply. For purposes of this part:

(a) Corrective action includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.

(b) Disciplinary action includes those disciplinary actions referred to the VIPA's Personnel Regulations and instructions applicable to employees, including but not limited to reprimand, suspension, demotion, and removal.

(e) Employee means any officer or employee of VIPA. The status of an employee is unaffected by pay or leave status.

(f) He, his, and him include she, hers and her.

§ 103 Disciplinary and corrective action.

(a) A violation of this part may be cause for appropriate corrective or disciplinary action to be taken under applicable VIPA wide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

(b) It is the responsibility of the employing agency (VIPA) to initiate appropriate disciplinary or corrective action in individual cases.

(c) A violation of this part does not create any right or benefit, substantive or procedural, enforceable at law by any person against VIPA, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures.

§ 104 Ethics advice.

(a) Each VIPA unit head is responsible for coordinating and managing VIPA's ethics program, by referring all request for ethics opinions to VIPA's Legal Counsel.

(b) Employees who have questions about the application of this part to particular situations must make a written request for advice either to their supervisor, and then the request will be forwarded to VIPA's Legal Counsel for an ethics opinion. Disciplinary action for violating this part will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of VIPA's ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Disclosures made by an employee to an VIPA's ethics official are not protected by an attorney-client privilege.

Subpart B—Gifts From Outside Sources

§ 201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 202 General standards.

(a) General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

(b) 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;
- (3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain.

§ 203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) "Gift" includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

- (1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;
- (2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
- (3) Loans from banks and other financial institutions on terms generally available to the public;
- (4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Virgin Islands Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;
- (5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;
- (6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;
- (7) Anything which is paid for by VIPA or secured by VIPA under a VIPA contract; and

NOTE: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of VIPA-financed travel belongs to the employee and may be accepted.

- (8) Anything for which market value is paid by the employee.

(b) "Market value" means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

(c) "Prohibited source" means any person who:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

(d) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his VIPA position.

(e) A gift which is solicited or accepted indirectly includes a gift:

- (1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or
- (2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee.

(f) "Vendor promotional training" means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a VIPA contract or by a contractor to facilitate use of products or services it furnishes under a VIPA contract.

§ 204 Exceptions.

The prohibitions set forth in § 202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in § 101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) Gifts of \$20 or less. An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the

aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

(b) Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

(c) Discounts and similar benefits. In addition to those opportunities and benefits excluded from the definition of a gift by § 203(b)(4), an employee may accept:

(1) Reduced membership or other fees for participation in organization activities offered to all VIPA employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to VIPA employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among VIPA employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that

(3) An employee may not accept for personal use any benefit to which VIPA is entitled as the result of an expenditure of VIPA funds.

(d) Awards and honorary degrees.

(1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education, based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

(e) Gifts based on outside business or employment relationships. An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

(2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

(f) Widely attended gatherings and other events—

(1) Speaking and similar engagements. When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) Widely attended gatherings. When there has been a determination that his attendance is in the interest of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$375 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will

attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(3) Determination of VIPA's interest. The determination of VIPA's interest required by paragraph (f)(2) of this section shall be made orally or in writing by the Legal Counsel.

(i) If the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the Legal Counsel that VIPA's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the Legal Counsel include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market value of the gift of free attendance.

(ii) A blanket determination of VIPA's interest may be issued to cover all or any category of invitees other than those as to whom the finding is required by paragraph (f)(3)(i) of this section. Where a finding under paragraph (f)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the person who has extended the invitation or, where that person is an association or organization, of its members.

(4) Free attendance. For purposes of paragraphs (f)(1) and (f)(2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (f)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.

(5) Cost provided by sponsor of event. The cost of the employee's attendance will not be considered to be provided by the sponsor, and the invitation is not considered to be from the sponsor of the event, where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) Accompanying spouse or other guest. When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (f)(1) or (f)(2) of this section. The authorization required by this paragraph may be provided in writing by the Legal Counsel.

(h) Social invitations from persons other than prohibited sources. An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

(1) The invitation is from a person who is not a prohibited source; and

(2) No fee is charged to any person in attendance.

(i) Meals, refreshments and entertainment in foreign areas. An employee assigned to duty in, or on official travel to, may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:

§ 205 Proper disposition of prohibited gifts.

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See § 203(c).

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

(b) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of

the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

Subpart C—Gifts Between VIPA Employees

§ 301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 302 General standards.

(a) Gifts to superiors. Except as provided in this subpart, an employee may not:

- (1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or
- (2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(b) Gifts from employees receiving less pay. Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

- (1) The two employees are not in a subordinate-official superior relationship; and
- (2) There is a personal relationship between the two employees that would justify the gift.

(c) Limitation on use of exceptions. Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

§ 303 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) Gift has the meaning set forth in § 203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) Indirectly, for purposes of § 302(b), has the meaning set forth in § 203(f). For purposes of § 302(a), it includes a gift:

- (1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or
- (2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, market value has the meaning set forth in § 203(c).

(d) "Official superior" means any other employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) "Solicit" means to request contributions by personal communication or by general announcement.

(f) "Voluntary contribution" means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

§ 304 Exceptions.

The prohibitions set forth in § 302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in § 302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) General exceptions. On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- (1) Items, other than cash, with an aggregate market value of \$10 or less per occasion;
- (2) Items such as food and refreshments to be shared in the office among several employees;
- (3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends; and
- (4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions.

(b) Special, infrequent occasions. A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

(c) Voluntary contributions. An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

(1) On a special, infrequent occasion as described in paragraph (b) of this section; or

(2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

Subpart D—**Conflicting Financial Interests**

§ 401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by § 403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with § 402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

§ 402 Disqualifying financial interests.

(a) Statutory prohibition. An employee is prohibited by Virgin Islands criminal statute, from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Direct and predictable effect.

(i) A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect

on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

(ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

NOTE: If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

(2) Imputed interests. The financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:

(i) The employee's spouse;

(ii) The employee's minor child;

(iii) The employee's general partner;

(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

(v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

(3) Particular matter. The term particular matter encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term particular matter, however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

(4) Personal and substantial. To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter.

To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

(c) Disqualification. Unless the employee is authorized to participate in the particular matter by virtue of a waiver or exemption described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) Documentation. An employee need not file a written disqualification statement unless he is asked by Legal Counsel or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(d) Waiver of or exemptions from disqualification. An employee who would otherwise be disqualified by may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory exemption or individual waiver described in this paragraph.

(e) Individual waivers. An individual waiver enabling the employee to participate in one or more particular matters may be granted by Legal Counsel, if, in advance of the employee's participation:

(i) The employee:

(A) Advises VIPA officials responsible for the employee's appointment (or other VIPA officials to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances of the particular matter or matters; and

(B) Makes full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the employee's financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the services which VIPA may expect from such employee. An individual waiver may be issued by Legal Counsel if the VIPA official responsible for the employee's appointment (or other VIPA official to whom authority to issue such a waiver for the employee has been delegated):

(a) Reviews the financial disclosure report filed by VIPA employee; and

(b) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the otherwise disqualifying financial interest.

(f) Divestiture of a disqualifying financial interest. Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, then the employee will no longer be prohibited from participation in the matter.

(1) Voluntary divestiture. An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) Directed divestiture. An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 403(a), or if the agency determines in accordance with § 403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(g) Official duties that give rise to potential conflicts. Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

§ 403 Prohibited financial interests.

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

(a) Legal Counsel's determination of substantial conflict. Legal Counsel may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the agency designee's determination that the holding of such interest or interests will:

(1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or

(2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

(b) Definition of financial interest. For purposes of this section:

(1) Except as provided in paragraph (c)(2) of this section, the term financial interest is limited to financial interests that are owned by the employee or by the employee's spouse or minor children. However, the term is not limited to only those financial interests that would be disqualifying under § 402. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled.

(2) The term financial interest includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under § 402(b)(2) (iii) or (iv).

(c) Reasonable period to divest or terminate. Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by Legal Counsel, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

Subpart E—**Impartiality in Performing Official VIPA Duties**

§ 501 Overview.

(a) This subpart contains two provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 502 to determine whether he should or should not participate in a particular matter.

NOTE: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth herein of this part apply and only a statutory waiver or exemption, as described in § 402(d) will enable the employee to participate in that matter. The authorization procedures in § 502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of VIPA in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations. Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth that also constitutes a determination that the interest of VIPA in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

§ 502 Personal and business relationships.

(a) Consideration of appearances by the employee. Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) Definitions. For purposes of this section:

(1) An employee has a covered relationship with:

(i) A person with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

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

NOTE: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) Direct and predictable effect has the meaning set forth in § 402(b)(1).

(3) Particular matter involving specific parties has the meaning set forth in § 102(a)(7) of this chapter.

(c) Determination by Legal Counsel. Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the Legal Counsel's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the Legal Counsel may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If Legal Counsel determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where Legal Counsel determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If Legal Counsel determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) Authorization by Legal Counsel. Where an employee's participation in a particular matter involving specific parties would not violate the law, but would raise a question in the mind of a reasonable person about his impartiality, Legal Counsel may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest

of VIPA in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by VIPA designee shall be documented in writing at the Legal Counsel's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by VIPA.

(e) Disqualification. Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(2) Documentation. An employee need not file a written disqualification statement unless he is specifically asked by Legal Counsel or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(f) Relevant considerations. An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

§ 503 Extraordinary payments from former VIPA employers.

(a) Disqualification requirement. Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering VIPA service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Extraordinary payment means any item, including cash or an investment interest, with a value in excess of \$10,000.00, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a VIPA position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into VIPA service.

(2) Former employer includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) Waiver of disqualification. The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by Legal Counsel.

Subpart F—**Misuse of VIPA Position**

§ 701 Overview.

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his VIPA employment. This subpart sets forth standards relating to:

- (a) Use of public office for private gain;
- (b) Use of nonpublic information;
- (c) Use of VIPA property; and
- (d) Use of official time.

§ 702 Use of VIPA position for private gain.

A VIPA employee shall not use his VIPA position for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a non-VIPA capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) Inducement or coercion of benefits. An employee shall not use or permit the use of his VIPA position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a non-VIPA capacity.

(b) Appearance of VIPA sanction. Except as otherwise provided in this part, an employee shall not use or permit the use of his VIPA position or title or any authority associated with his VIPA position in a manner that could reasonably be construed to imply that VIPA sanctions or endorses his personal activities or those of another. He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of VIPA employment or whom he is recommending for VIPA employment.

(c) Endorsements. An employee shall not use or permit the use of his VIPA position or title or any authority associated with his position to endorse any product, service or enterprise except:

(1) In furtherance of statutory authority to promote products, services or enterprises; or

(2) As a result of documentation of compliance with VIPA requirements or standards or as the result of recognition for achievement given under a VIPA program of recognition for accomplishment in support of VIPA's mission.

(d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of his VIPA position for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a non-VIPA capacity shall comply with any applicable requirements herein.

(e) Use of terms of address and ranks. Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable", or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

§ 703 Use of nonpublic VIPA information.

(a) Prohibition. A VIPA employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

(b) Definition of nonpublic information. For purposes of this section, nonpublic information is information that the employee gains by reason of VIPA employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

- (1) Is routinely exempt from disclosure or otherwise protected from disclosure by statute, Executive order or regulation;
- (2) Is designated as confidential by VIPA; or
- (3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

§ 704 Use of VIPA property.

(a) Standard. An employee has a duty to protect and conserve VIPA property and shall not use such property, or allow its use, for other than authorized purposes.

(b) Definitions. For purposes of this section:

(1) "VIPA property" includes any form of real or personal property in which VIPA has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with VIPA funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, VIPA mails, automated data processing capabilities, printing and reproduction facilities, VIPA records, and VIPA vehicles.

(2) Authorized purposes are those purposes for which VIPA property is made available to members of the public or those purposes authorized in accordance with law or regulation.

§ 705 Use of VIPA's official time.

(a) Use of an employee's own time. Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

(b) Use of a subordinate's time. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.