

INSTRUCTION GUIDE ON THE DEPARTMENT OF HOMELAND SECURITY LOANED EXECUTIVE PROGRAM

I. Purpose

- A. This Instruction implements the Department of Homeland Security (DHS) Directive 084-01, Department of Homeland Security Loaned Executive Program.
- B. DHS implements and administers this Program in accordance with Agency policy as provided by the Office of the Under Secretary for Management.

II. Scope

- A. This Instruction applies throughout DHS.
- B. The Office of the Inspector General (OIG) is exempt from this directive per 5 USCA, App. 3, § 6.

III. Reference

DHS Management Directive 3010.2, "Employment of Experts and Consultants," dated March 22, 2004.

IV. Definitions

- A. **Loaned Executive Program (LEP)**: Mechanism by which DHS can obtain expertise from the private sector to provide critical skills that cannot be obtained through other existing hiring mechanisms.
- B. **Loaned Executive**: An unpaid, temporary Federal employee with specialized private sector expertise.
- C. **Private Sector Employer**: The employer of the Loaned Executive working in the Loaned Executive program.

V. Content and Procedures

A. Length of Appointment

Initial appointments may be made for a period of at least three months and no more than one year. The loaned executive may be reappointed for additional periods with the total appointment not to exceed two years.

B. Termination of Appointment

1. LEP appointments may be terminated by DHS at any time it is determined that the Loaned Executive:

- a. Provides services which are no longer needed;
- b. Has a conflict of interests;
- c. Violates or refuses to sign a nondisclosure agreement;
- d. Performs at an unacceptable level as outlined in the Component assignment description and Appendix [E](#) & [F](#).

2. Specific procedures will be discussed with OCHCO in advance of notifying any expert or consultant of termination.

C. Identifying Need for Loaned Executive

To initiate an assignment, the appropriate official from the proposing office must:

1. Complete the assignment description form ([Appendix A](#)) which clearly identifies the work to be performed during the assignment. The assignment description must also include:

- a. The name and title of the proposing official. Note: This must be the most senior person in the chain of supervisors and must be at the Executive Director level or higher. This authority is not delegable.

b. The name and title of the official responsible for overseeing the assignee and for monitoring the Loaned Executive's contact with the private sector employer during the course of the assignment. The responsible official will ensure compliance with the current employment and other restrictions outlined in the assignment description. In the absence of a designated responsible official, the proposing official will also serve as the responsible official.

2. Submit the assignment description form to the Assistant Secretary of the Private Sector Office (PSO) who will circulate the assignment description form to the Office of Chief Human Capital Officer (OCHCO), Office of General Counsel (OGC)/General Law Division (GLD), Office of the Chief Procurement Officer (OCPO) and the Designated Ethics Official (DAEO).

D. Certifying Appropriate Use of LEP

1. OCHCO, OGC/GLD, OCPO, DAEO and PSO will review the assignment description form to ensure appropriate use of the LEP.

2. For additional information on alternative methods of employing temporary expertise and the limitations listed below, reference MD 3010.2 on the Employment of Experts and Consultants, MD 3020.1 on Schedule C Positions and Appointments, MD 3150.1 on Non Career and Limited Senior Executive Service Employment, MD 3030.1 on the Senior Executive Service Merit Staffing Plan and MD 3130.2 on Employee Details.

3. DHS **may not** use Title 5, U.S.C., 3109 to appoint individuals:

a. To a position requiring Presidential appointment.

b. To a position in the Senior Executive Service (SES).

c. To perform managerial or supervisory work (although an expert may act as team leader or director of the specific project for which he/she is hired), to make final decisions on substantive policies, or to otherwise function in the DHS chain of command (e.g., to approve financial transactions, personnel actions, etc.).

d. To do work performed by DHS's regular employees (with the exception of project work related to program goals and objectives where the executive may work on a team with regular DHS employees).

- e. To fill in during staff shortages.
- f. Solely in anticipation of giving that individual a career appointment. However, subject to the conditions of this part, DHS may appoint an individual to an expert or consultant position pending Schedule C appointment or non-career appointment in the Senior Executive Service.
- g. To do work traditionally performed by a contractor or a personal services contractor.
- h. To do work performed pursuant to the Intergovernmental Personnel Act (IPA).

4. With the approval of the assignment description form by OCHCO, OGC/GLD, OCPO, DAEO and PSO, the solicitation of applicants may begin.

E. Soliciting Applicants

- 1. The PSO will solicit applicants in as public a manner as possible, specifically to include issuing a press release with the job description and consulting with associations whose members would be likely to have the expertise being sought.
- 2. Upon receipt of the applications, PSO will assemble them for review by the proposing Component.

F. Selecting Applicants

- 1. Selection Criteria
 - a. For both the private sector and DHS to realize the maximum benefit from this Program, private sector personnel must have a certain level of experience in the areas defined in the assignment description provided by the Component. A security clearance may be required.
 - b. To be eligible for an appointment to DHS under this Program, in addition to meeting the requirements of Title 5, CFR, Part 304, candidates must meet citizenship requirements for Federal employment in accordance with Title 5, CFR, Section 302.203, as well as any other legal limitations.
- 2. The proposing Component will review the applications and select the candidate for the approved assignment description.

3. The proposing Component will advise PSO of its selection and the PSO will notify the selected candidates. At that point, the candidate will begin the clearance process.

G. Getting clearance information from the selected Loaned Executive

1. The proposing office will provide the selected Loaned Executive with the appropriate forms for clearance, ethics, and background checks.

2. The proposing office will complete section A of the Loaned Executive Program Clearance Sheet ([Appendix B](#)) and forward it with any applicable forms, the assignment description form, a conflict of interests form, and the selected Loaned Executive's resume to the Office of the Chief Human Capital Officer (OCHCO).

H. Clearing the selected Loaned Executive

1. OCHCO will concurrently forward the Loaned Executive package (including Appendix [A](#), [B](#), [C](#), [D](#), [E](#), & [F](#)) to the Office of the Chief Procurement Officer (OCPO), Designated Agency Ethics Official (DAEO), Office of General Counsel (OGC) / General Law Division (GLD).

2. OCPO will review the package regarding the extent and nature of the business the private sector employer currently does, or intends to do with DHS.

a. OCPO will identify the nature and status of any interests that the candidate's PSE has that involve DHS,

b. If the PSE has interests that involve DHS, OCPO will work with the proposing official, the DAEO, and Component procurement and ethics officials, in investigating, evaluating, and resolving the nature and degree of any conflicts, including those addressed in 48 C.F.R. Subpart 9.5, Organizational and Consultant Conflicts of Interests. In appropriate cases, the OCPO will work with the above listed parties and the PSE to develop an Organizational Conflict of Interests Avoidance and Mitigation Plan.

c. Following any necessary coordination with the proposing official and the DAEO, the DHS Office of Procurement will sign off on the Loaned Executive Program Clearance Sheet ([Appendix B](#)) and forward the Loaned Executive Package, along with its Procurement Determination Memorandum ([Appendix C](#)) to OCHCO.

3. The Designated Agency Ethics Official (DAEO) will review for any conflicts.

a. If there are matters that may present a conflict the DAEO will work directly with the proposing office, including their ethics officials, OCPO, and the nominee to evaluate them. (Note: in these cases, the ethics determination must include a description of the matters identified and the required remedies that would permit the assignment.) The DAEO will clear the candidate once identified conflicts have been resolved.

b. If there are irresolvable ethical conflicts, the assignment cannot be made with that particular nominee the Loaned Executive package will be returned to OCHCO. OCHCO will notify the proposing office and the PSO.

c. If there are no irresolvable ethical conflicts, the DAEO will sign off on the Loaned Executive Program Clearance Sheet ([Appendix B](#)) and forward the Loaned Executive Package, along with an Ethics Determination Memorandum ([Appendix D](#)) and the completed conflict of interests statement ([Appendix E](#)) to OCHCO.

d. Certain irresolvable ethical conflicts are listed in the federal ethics rules, which include, but are not limited to:

Where the LE candidate is unable or refuses to disqualify him or herself from any further actions on a contract or other particular matter, obtain waivers or divest financial holdings or where the disqualifications resulting from his conflicts of interests are so significant that he could not readily do his prescribed LE duties.

4. The selected Loaned Executive will be required to sign a non-disclosure agreement ([Appendix F](#)). OGC will forward its clearance to OCHCO.

I. Entering on Duty

1. After approval of the Loaned Executive, offers of appointment will be made by DHS and administered by the Office of the Chief Human Capital Officer (OCHCO) in accordance with applicable policies, laws, rules, and regulations.

2. OCHCO will make appropriate arrangements in coordination with the servicing Human Resource office (as appropriate) per existing policies and procedures for the individual's entry on duty to include the report date, new employee orientation, security badging, space and equipment needed to perform tasks outlined in the assignment description.

3. Generally, an individual is appointed to the duty location where they are expected to perform work for the agency. If the work is to be performed in Washington, D.C., the duty location must be Washington, D.C.

4. There is no authority to pay travel expenses for the Loaned Executive to return to his/her private sector employer's facilities.

J. Reporting Requirements

Title 5, CFR, 304.107 does not establish a reporting requirement regarding the use of **unpaid** experts or consultants appointed under Title 5, CFR, Part 304. However, the following internal reporting is required:

1. Consistent with the provisions of DHS Management Directive 3010.2, "Employment of Experts and Consultants," at the request of OCHCO, each DHS Component where an Loaned Executive is employed shall provide a listing of current Loaned Executive appointments.

This report will provide the nature of the appointment, the name of the individual, a statement that the Loaned Executive is unpaid, a brief statement of the purpose, and the duration of the appointment.

2. Any request for an extension of an appointment by the DHS Component, or a reappointment after a break in service, shall include a detailed description of previous appointments including the information listed above plus the number of days or hours the expert or consultant worked in the previous appointment.

VI. Questions

A. Address any questions or concerns regarding this Instruction to the Private Sector Office, within the Office of Policy.

B. This Instruction Guide contains six appendices to assist with the private sector loaned executive program:

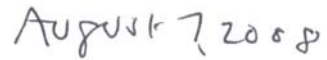
[Appendix A](#) Assignment Description Form

[Appendix B](#) Loaned Executive Program Clearance Sheet

- [Appendix C](#) Procurement Determination Regarding the Appointment of Unpaid Loaned Executive to DHS
- [Appendix D](#) Ethics Determination Regarding the Appointment of an Unpaid Loaned Executive to DHS
- [Appendix E](#) Acknowledgement of Conflict-of-Interests Matters in Connection with Loaned Executive Program
- [Appendix F](#) Non-Disclosure Agreement



Stewart A. Baker
Assistant Secretary for Policy



Date

DEPARTMENT OF HOMELAND SECURITY

**ASSIGNMENT DESCRIPTION FORM
LOANED EXECUTIVE PROGRAM**

(To be completed by Originating Office)

Assignment Description (1-2 paragraphs):

Proposing Official (Name, Title, Signature and Date):

(Program assignments may be proposed only by the most senior person in the chain of supervisors and must be at the Executive Director level or higher. This authority is not delegable.)

Responsible Official (Name, Title, Signature and Date):

**DEPARTMENT OF HOMELAND SECURITY
LOANED EXECUTIVE PROGRAM CLEARANCE SHEET**

Section A

Date:

To: Chief Human Capital Officer

From (Name and Title of Proposing Official):

Proposing Office (Name and Geographic Location):

Name of Proposed Loaned Executive:

Proposing Office Contact Point (Name, phone number and email address)

Private Sector Employer Contact Point (Name, phone number and email address)

Section B

Office	Clearing Official	Approve	Disapprove	Notes	Date
Chief Procurement Officer					
		Procurement Determination Memo attached			
DAEO Ethics Officer					
		Ethics Determination Memo attached, Appropriate Financial Disclosure Report , Conflict of Interests Statement			
OGC/GLD					
		Non-Disclosure agreement			
CHCO					

DEPARTMENT OF HOMELAND SECURITY

**PROCUREMENT DETERMINATION REGARDING THE APPOINTMENT OF UNPAID
LOANED EXECUTIVE TO DHS**

MEMORANDUM FOR CHIEF PROCUREMENT OFFICER

FROM: (Insert Name and Title of Appropriate Proposing Official)

SUBJECT: Procurement Determination regarding the Loaned Executive Program

I would like to appoint **(insert name of proposed Loaned Executive)** as an unpaid, temporary Loaned Executive to the Loaned Executive Program. Attached are the proposed Loaned Executive's resume and a description of the assignment.

The proposed Loaned Executive is a current employee of **(insert full name and address of private sector employer)**. In accordance with the policy governing the Loaned Executive Program, I am requesting a determination from your office regarding the extent and nature of the business the private sector employer does or intends to do with DHS.

Please indicate your determination below.

My office has determined that other than being the proposed assignee's employer, the private sector employer has no interests in DHS.

My office has identified matters that must be evaluated before this assignment can take place. (Attach a description of the matters and how they involve DHS and necessary remedies, to include a draft Organizational Conflict of Interests (OCI) Avoidance & Mitigation Plan with recommendations).

Signature of Chief Procurement Officer

Date

ETHICS DETERMINATION REGARDING THE APPOINTMENT OF AN UNPAID LOANED EXECUTIVE TO DHS

MEMORANDUM FOR LEGAL ADVISOR FOR ETHICS

FROM: (Insert Name and Title of Appropriate Proposing Official)

SUBJECT: Ethics Determination Regarding the Appointment of an Unpaid Loaned Executive to DHS.

I would like to appoint **(insert name of proposed Loaned Executive)** as an unpaid, temporary Loaned Executive to the Loaned Executive Program. Attached are the proposed Loaned Executive's resume a description of the Loaned Executive's anticipated duties, and his or her financial disclosure report.

The proposed Loaned Executive is a current employee of **(insert full name and address of private sector employer)**. In accordance with the policy governing DHS, I am requesting a determination as to any conflict under Executive Branch Standards of Conduct that is likely to be presented by assigning this individual to these duties. If you determine that a conflict is possible, please provide information regarding what steps would need to be taken to eliminate the conflict or appropriately minimize the potential of encountering it.

Please indicate your determination below.

___ My office has determined that the proposed Loaned Executive has no interests or affiliations that might conflict with the assignment.

___ My office has identified matters that must be resolved before this assignment can take place. (Attach a description of the matters and the necessary remedies)

___ My office has determined that there are irresolvable conflicts that would prohibit this particular Loaned Executive from serving in this assignment.

Signature of Legal Advisor for Ethics, DAEO

Date

DEPARTMENT OF HOMELAND SECURITY

ACKNOWLEDGEMENT OF CONFLICT-OF-INTERESTS MATTERS IN CONNECTION WITH LOANED EXECUTIVE PROGRAM

The employee will serve as an unpaid, temporary Loaned Executive at the Department of Homeland Security (DHS) without compensation for a period not to exceed one year. The employee's private sector employer, at its discretion, may continue paying a salary and health and retirement benefits to the employee during the employee's service at DHS as a Government employee. The employee's continued participation in any profit sharing plan will be allowed only if consistent with the conflict-of-interests requirements referenced below.

The employee, while serving at DHS, is a Federal employee and is subject to the Federal conflict-of-interests laws and regulations for employees in the Executive Branch, including the post-Government-service restrictions in 18 U.S.C. § 207, set out in Title 18, United States Code, Part I, Crimes, Chapter 11, Bribery, graft, and conflicts of interests, and Title 5, Code of Federal Regulations, Parts 2634, Executive branch financial disclosure, 2635, Standards of ethical conduct for employees of the executive branch.

DHS will not ask the employee to, nor may the employee work on matters that will have a direct and predictable economic impact on any of the employee's interests or affiliations or those imputed to him or her, specifically including the employee's private sector employer, unless a waiver is granted pursuant to Title 18, U.S.C., § 208(b)(1). The employee will not work on procurement matters in which the private sector employer may have an interest regardless of the degree of the private sector employee's interest in procurement. Also, the private sector employer may advise DHS from time to time as to DHS matters, current or anticipated, in which the private sector employer does not want the employee to participate.

DHS will not ask the employee to work on, nor may the employee work on, matters that will have a direct and predictable economic impact on his or her financial interests or affiliations or those of persons or entities whose interests are imputed to him or her.

The employee, while serving at DHS, will be required to comply with the President's Principles of Ethical Conduct for Government Officers and Employees, Executive Order 12731, and the conflict-of-interests laws and regulations for employees in the Executive Branch, including the post-Government-service restrictions in Title 18, U.S.C., § 207.

APPENDIX E

Prior to beginning working for DHS, the employee will sign a nondisclosure agreement prohibiting him or her from disclosing non-public information obtained during his or her service with DHS. Also, the employee will be required to present proof of or apply for any security clearance required to perform the duties to which he or she will be assigned, specifically including but not limited to completing the Security Questionnaire, SF 86. Finally, the employee will file the appropriate financial disclosure report, usually the Public Financial Disclosure Report, SF 278.

The employee and PSE have independent responsibilities to alert the concerned DHS supervisor and the DAEO to any matter that could pose a potential conflict of interests.

LOANED EXECUTIVE Date:_____

PRIVATE SECTOR EMPLOYER Date:_____

DAEO Date:_____

DEPARTMENT OF HOMELAND SECURITY

NON-DISCLOSURE AGREEMENT LOANED EXECUTIVE PROGRAM

The purpose of this agreement is to ensure that nonpublic information, which is obtained by virtue of working at the Department of Homeland Security (DHS) is not disclosed by the unpaid, temporary Loaned Executive of DHS to persons, companies, or organizations outside the Federal Government; and that such information is not used by such entities to obtain an unfair advantage.

AGREEMENT

As a DHS unpaid, temporary Loaned Executive, I, the undersigned, agree that I will not disclose to any person, company, or organizations outside the Federal Government any nonpublic information learned by me as a result of my work at DHS the disclosure of which might, directly or indirectly, afford any person, company, or organization an unfair competitive advantage or otherwise further any private interests. With respect to procurements, such information shall include, but not be limited to, information regarding discussions and plans or decisions relating to an acquisition, unless the release of the information is expressly authorized in writing by appropriate DHS officials. With respect to information that pertains to internal agency communications, such nonpublic information shall include, but not be limited to, acquisition plans, budgeting information, source selection plans, source selection evaluation memoranda or reports, technical analyses and recommendations, unless the release of the information is expressly authorized in writing by appropriate DHS officials.

I also agree that I will obtain approval from the appropriate DHS official(s) prior to the release of any official DHS information, in accordance with the DHS policies in effect at the time the disclosure is to take place. This includes, but is not limited to, information to be provided in any litigation or to Federal, Tribal, State or local legislative representatives or their staffs, speeches, editorial comments, manuscripts or other works I author, and responses to media requests.

I am aware of and will abide by the requirement of Title 18, U.S.C., § 1905, which provides: "Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data,

APPENDIX F

amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.”

For the purposes of this agreement and the standards of ethical conduct in Part 2635 of Title 5, Code of Federal regulations, nonpublic information is information that the intermittent consultant gains by reason of Federal employment and that he or she knows or reasonably should know has not been made available to the general public. It includes information that he or she knows or reasonably should know:

- (1) Is routinely exempt from disclosure under the Freedom of Information Act, Title 5, U.S.C., § 552, or otherwise protected from disclosure by statute, Executive order, or regulation;
- (2) Is classified in the interests of national security under Executive Order 12958 as amended by Executive Order 13292, is protected information (Sensitive Security Information, PClI, etc.) bears the legend For Official Use Only or Controlled Unclassified Information, or is otherwise marked, denominated, or determined by the Government not to be suitable for disclosure outside of authorized official channels; or
- (3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request. See Title 5, CFR, § 2635.703(b).

I agree to immediately report to DHS any potential or possible violation of this agreement.

LOANED EXECUTIVE: _____

SIGNATURE: _____

DATE: _____