EVALUATION FORM

In order for us to improve our continuing legal education programs, we need your input. Please complete this evaluation form and place it in the box provided at the registration desk at the end of the session. You may also mail the form to CLE Director, NYCLA, 14 Vesey Street, New York, NY 10007.

So You’re Interested in a Non-Litigation Career in the Public Sector

November 10, 2015; 6:30 PM – 8:30 PM

I. Please rate each speaker in this session on a scale of 1 - 4 (1 = Poor; 2 = Fair; 3 = Good; 4 = Excellent)

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<th>Speaker</th>
<th>Presentation</th>
<th>Content</th>
<th>Written Materials</th>
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<td>Erica Buckley</td>
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<td>Richard Diorio</td>
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II. Program Rating:

1. What is your overall rating for this course? Excellent □  Good □  Fair □  Poor □

Suggestions/Comments: __________________________________________________________

A. Length of course: Too Long____ Too Short____ Just Right_____

B. Scheduling of course should be: Earlier____ Later_____ Just Right_____

2. How did you find the program facilities?

Excellent □  Good □  Fair □  Poor □

Comments: __________________________________________________________

Please turn over to page 2
3. How do you rate the technology used during the presentation?

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<br>Comments:__________________________________________

4. Why did you choose to attend this course? (Check all that apply)

| □ Need the MCLE Credits | □ Faculty | □ Topics Covered |
| □ Other (please specify) | ________________________________ |

5. How did you learn about this course? (Check all that apply)

| □ NYCLA Flyer | □ NYCLA Postcard | □ CLE Catalog | □ NYCLA Newsletter |
| □ NYCLA Website | □ New York Law Journal Website | □ NYCLA CLE Email |
| □ Other (please specify) | ________________________________ |
| □ Google Search | ________________________________ |

6. What are the most important factors in deciding which CLE courses to attend (Please rate the factors 1-5, 1 being the most important).

| ___ Cost | ___ Subject matter | ___ Location | ___ Date and Time | ___ Provider | ___ Organization of which you are a member | ___ Other | ________________________________ |

6. Are you a member of NYCLA? ___ Yes ___ No

III If NYCLA were creating a CLE program specifically tailored to your practice needs, what topics or issues would you want to see presented?
So You’re Interested in a Non-Litigation Career in the Public Sector

Prepared in connection with a Continuing Legal Education course presented at New York County Lawyers’ Association, 14 Vesey Street, New York, NY scheduled for November 10, 2015

Program Co-sponsor: NYCLA’s Young Lawyers Section and Lawyers in Transition Committee
Program Chair: Katherine J. Hwang, NYS Attorney General, Real Estate Finance Bureau
Moderator: Richard Diorio, Cardozo Law School, Class of 2017
Faculty: Erica F. Buckley, Bureau Chief, Office of the New York State Attorney General Real Estate Finance Bureau; Diana Leyden, Taxpayer Advocate, New York City Department of Finance; Francisco J. Ruso, Special Park and Land Use Specialist, Office of Business Services National Park Service, Gateway National Recreation Area; Milton Yu, Inspector General, NYD Department of Investigation

This course has been approved in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of 2 Transitional and Non-Transitional credit hours: 1 Professional Practice; 1 Ethics.

This program has been approved by the Board of Continuing Legal education of the Supreme Court of New Jersey for 2 hours of total CLE credits. Of these, 1 qualifies as an hour of credit for ethics/professionalism, and 0 qualify as hours of credit toward certification in civil trial law, criminal law, workers compensation law and/or matrimonial law.

ACCREDITED PROVIDER STATUS: NYCLA’s CLE Institute is currently certified as an Accredited Provider of continuing legal education in the States of New York and New Jersey.
Information Regarding CLE Credits and Certification

So You’re Interested in a Non-Litigation Career in the Public Sector

November 10, 2015; 6:30 PM to 8:30 PM

The New York State CLE Board Regulations require all accredited CLE providers to provide documentation that CLE course attendees are, in fact, present during the course. Please review the following NYCLA rules for MCLE credit allocation and certificate distribution.

i. **You must sign-in** and note the time of arrival to receive your course materials and receive MCLE credit. The time will be verified by the Program Assistant.

ii. You will receive your MCLE certificate as you exit the room at the end of the course. The certificates will bear your name and will be arranged in alphabetical order on the tables directly outside the auditorium.

iii. If you arrive after the course has begun, you must sign-in and note the time of your arrival. The time will be verified by the Program Assistant. If it has been determined that you will still receive educational value by attending a portion of the program, you will receive a pro-rated CLE certificate.

iv. **Please note:** *We can only certify MCLE credit for the actual time you are in attendance.* If you leave before the end of the course, you must sign-out and enter the time you are leaving. The time will be verified by the Program Assistant. Again, if it has been determined that you received educational value from attending a portion of the program, your CLE credits will be pro-rated and the certificate will be mailed to you within one week.

v. If you leave early and do not sign out, we will assume that you left at the midpoint of the course. If it has been determined that you received educational value from the portion of the program you attended, we will pro-rate the credits accordingly, unless you can provide verification of course completion. Your certificate will be mailed to you within one week.

*Thank you for choosing NYCLA as your CLE provider!*
So You’re Interested in a Non-Litigation Career in the Public Sector

Tuesday, November 10, 2015 6:30 PM to 8:30 PM

Program Co-sponsor: NYCLA’s Young Lawyers Section and Lawyers in Transition Committee

Program Chair: Katherine J. Hwang, NYS Attorney General, Real Estate Finance Bureau

Moderator: Richard Diorio, Cardozo Law School, Class of 2017

Faculty: Erica F. Buckley, Bureau Chief, Office of the New York State Attorney General Real Estate Finance Bureau; Diana Leyden, Taxpayer Advocate, New York City Department of Finance; Francisco J. Ruso, Special Park and Land Use Specialist, Office of Business Services National Park Service, Gateway National Recreation Area; Milton Yu, Inspector General, NYD Department of Investigation

AGENDA

6:00 PM – 6:30 PM  Registration

6:30 PM – 6:40 PM  Introduction and Announcements

6:40 PM – 8:30 PM  Presentation and Discussion
Re: Exemption for Partial Building Sales
In Residential Rental Buildings

Date: October 10, 2014

I. Introduction

In many mixed-income rental buildings, financing and/or tax exemptions are tied to requirements that certain rental units remain affordable to low-income tenants for a period of at least 30 years. In some cases, existing regulatory agreements also require that all units in the building remain rental. These circumstances exist most commonly where owners participated in 80/20 programs and obtained multi-layered subsidies such as bond financing, low-income housing tax credits (LIHTC), and 421-a tax exemptions in exchange for setting aside 20% of the units as income-restricted rentals.\(^1\) In these circumstances, owners typically wait for the relevant requirements to expire and then seek to convert the building, in its entirety, to a market-rate condominium or cooperative, resulting in the loss of the building’s affordable rental units.

Under Department of Law (DOL) regulations, an owner does not generally have the option to offer for sale only market-rate rental units in an occupied building while continuing to own and operate the affordable units as income-restricted rentals (a “partial sales program”). This forecloses a potential means of preserving affordable housing and, potentially, expanding its quantity. Going forward, DOL will use its authority to grant exemptions in service of that objective.

Specifically, exemptions will be granted to allow a partial sales program if, and only if, the applicant has obtained support for the exemption from the relevant housing finance agency (HPD, HDC, or HFA) because the conversion will preserve existing affordable housing following the expiration of existing requirements and may add additional income-restricted units – rental or homeownership – to the project.

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\(^1\) 80/20 is generally used to refer to the ratio of market rate units to income-restricted units in rental projects that qualify for tax-exempt bond financing and low-income housing tax credits under Section 42 of the Internal Revenue Code.
This memo provides an overview of the relevant sections of the Martin Act and applicable regulations and sets forth the procedure for submission of an exemption application for an owner of a mixed-income rental building requesting permission to convert such building, buildings, or group of buildings to condominium or cooperative status through a partial sales program.

II. Overview of the Martin Act and Applicable Regulations

The Martin Act requires an offering plan whenever an owner wishes to convert a building, group of buildings, or development in New York City from residential rental status to condominium or cooperative ownership. N.Y. Gen. Bus. Law § 352-eeee(1)(a). When converting, the Sponsor is required to provide all bona fide tenants in occupancy an exclusive right to purchase their dwelling units for 90 days after the offering plan is presented. See 13 N.Y.C.R.R. § 23.3(n)(1)(i)(a); see also § 18.3(m)(1)(iii)(a)(1). Thus, the Sponsor is not able to simultaneously sell the market-rate units while maintaining the rental status of the income-restricted units.

The regulations permit the Sponsor to request an exemption from certain regulatory provisions, as follows:

Upon written application of the sponsor or sponsor's attorney, the Department of Law, in its discretion, may exempt a plan from the application of any provision of this Part, where it is found that enforcement of the provision is not necessary to effectuate the purposes of the G.B.L. or to protect the investing public. Id. § 23.1(k) and § 18.1(k).

The Martin Act, as it relates to the regulation of real estate securities, was intended to serve two purposes. First, it preserves, stabilizes, and improves neighborhoods by facilitating homeownership. See 1982 N.Y. Laws, ch 555, §§ 1, 9. Second, it protects tenants in occupancy who do not participate in the conversion process from harassment, deterioration of services, and threats of imminent eviction due to the decision to remain a rental tenant. See id., § 1. The proposed exemption application is consistent with both statutory purposes of the Martin Act: the facilitation of homeownership and the full protection of rental tenants.

III. Procedure for Submission of an Exemption Application

The DOL has developed the following exemption application process for building owners who propose a partial sales program that preserves existing affordable housing, and in some cases, will add additional income-restricted units to the project.

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2 13 N.Y.C.R.R. Part 23 governs the conversion of a residential rental building to condominium status whereas 13 N.Y.C.R.R. Part 18 governs the conversion of a residential rental building to cooperative status.
The exemption application must be submitted to the DOL prior to the submission of the offering plan. In the exemption application, the building owner must include an attorney transmittal letter with the requisite unqualified statements required by 13 NYCRR § 23.4(a) and § 18.4(a) along with an affidavit from the proposed principals of Sponsor, including the following information:

- The type of financing currently encumbering the building or buildings, and any restrictions that require certain units to remain income-restricted rentals, including the current duration of such restrictions;

- Whether there are any regulatory agreements recorded against the building or buildings, and if so, the parties to such agreements and the remaining duration thereof;

- The number of units, by percentage, that must currently be maintained as income-restricted rental, and the nature and breakdown of those restrictions (e.g., area median income (AMI) of income-restricted tenants, whether leases must be rent-stabilized);

- Whether the market-rate and/or income-restricted units are rent-stabilized and if so, whether leases contain a rider permitting deregulation of any of the units, and if so, the proposed date of termination of rent stabilization status of such units;

- The number of income-restricted units that will be maintained if the exemption application is granted, and whether the nature and breakdown of those restrictions may change (e.g., increase in AMI after period of time);

- The number of additional income-restricted units, whether rental or homeownership, that will be added to the project if the exemption application is granted, and whether the nature and breakdown of those restrictions may change;

- The duration or, where applicable, permanence of the income-restricted units, whether rental or homeownership, if the exemption application is granted;

- A detailed description of the proposed financing terms and affordability restrictions to be implemented with respect to the income-restricted units if the condominium or cooperative conversion takes place;

- The manner in which title to the income-restricted rental units will be held if the exemption is granted (e.g., 20% income-restricted rental units will be owned as one condo unit); and

- How the board of the condominium or cooperative will be structured to ensure that the interests of both unit owners and income-restricted tenants are adequately represented.
The application must include a letter of support from the relevant housing finance agency. The letter must confirm that the basis for the agency’s support is consistent with the terms outlined in the affidavit from the proposed principals of Sponsor, and should explain why the exemption is necessary to further the affordable housing preservation goals of the City or State. The DOL will not issue an exemption without a letter of support from the relevant housing finance agency.

The application for exemption will be granted if it effectuates the purposes of the Martin Act by preserving and in some cases expanding the number of income-restricted units. The DOL shall act on an exemption application within 30 days of receipt. There will be no charge for such application and it must be submitted prior to the submission of the offering plan.

Applications should be sent to:

New York State Office of the Attorney General
The Real Estate Finance Bureau
c/o Bureau Chief
120 Broadway, 23rd Floor
New York, NY 10271

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3 Sponsors should note that HPD, HDC, and HFA have collectively agreed to require the same general terms and conditions before the letter of support will be issued. Sponsors should contact the relevant housing finance agency to obtain such information.
Looser Rules Pave Way For NYC Affordable Housing Projects

By Kaitlin Ugolik

Law360, New York (October 02, 2014, 7:17 PM ET) -- The commissioner of New York City's Department of Housing Preservation and Development detailed Wednesday how the agency will streamline the development process for affordable housing projects, allowing developers faced with new mandatory inclusionary zoning rules to breathe easier.

Since Mayor Bill de Blasio announced his ambitious plan to create or preserve 200,000 units of affordable housing in the city over the next 10 years, developers and their attorneys have been cautiously optimistic.

Many have seen the positive side of residential projects being allowed in places where they would not have been previously, thanks to planned zoning changes. But with those zoning changes comes a mandate to build an affordable component with any new development, and the administration has been adamant that there will be few — if any — new monetary incentives.

So when HPD Commissioner Vicki Been told attendees at a Citizens Budget Commission event Wednesday that sweeping changes are coming to the way the agency does business that will cut a lot of red tape and speed up the process, many developers and their attorneys were pleased.

“It was great to hear," said John Kelly, an affordable housing expert and partner at Nixon Peabody LLP. “I think it's the right first step, and it's necessary if they're really going to carry out the plan they want to do.”

Included in that first step will be significant changes to the two elements of the development process that experts say create the biggest bottlenecks: design review and clearance.

The design and architecture review will likely be completely overhauled, Been told the attendants at Wednesday's meeting, and the HPD will shift to the self-certification system backed up by random audits that has seen success elsewhere in city government, including at the Department of Buildings.

These changes are expected to cut down on the waiting time that many developers often suffer through as they try to get a project off the ground, adding unnecessary costs and — perhaps most importantly for Been's purposes — dissuading some from seeking out affordable housing opportunities.

HPD staff will still have a hand in reviewing projects, but the changes — which Been said will be explained in more detail soon — are expected to be significant.
“It’s exciting to start to see specifics of the plan, we’ve all been kind of waiting for that,” said Jennifer Dickson, senior planning and development specialist at Herrick Feinstein LLP.

But she noted that the process, even with the proposed tweaks, is extremely complex. As the city attempts to make affordable housing development more attractive and expand inclusionary zoning districts, a growing number of architects and developers with little experience in this arena will be joining the fray.

“I think they will be looking to the city agencies to continue to guide them,” Dickson said.

The specific extent to which HPD officials will remain involved in the process is one of many questions that remain unanswered. Another is exactly how the agency will ensure compliance with a new self-certification process, outside of random audits.

“The risk of self-certification is: What if people don’t certify well? There’s always a balance of government regulation between reducing red tape on one hand, and assuring people live up to the appropriate standards on the other,” said David Reiss, a real estate professor at Brooklyn Law School.

But for many, just hearing from the HPD that these changes are on the table is cause for optimism.

“This is what people have been waiting for, for actions and steps to be made,” said Joseph Lynch of Nixon Peabody. “This isn’t just a concept now.”

Lynch said he spoke with some members of the industry Wednesday night after Been had made her statements and they were pleased that the city appeared to be taking their concerns seriously.

And many had been concerned, because building or preserving 200,000 units in 10 years with little to no monetary incentives for the base line of affordability required for each project is a massive undertaking.

“There has been a realization that you have to change the mechanisms,” Lynch said. “In order to get the deal flow and get the affordable housing units on the street, they have to make some changes within the government’s workings.”

Change is certainly coming to the HPD, where Been announced a complete overhaul. The agency’s analytics and planning endeavors will undergo a shift, as will neighborhood outreach, and a new division called Community Strategies is being created to cope with the new demand on the agency thanks to the affordable housing push.

A former planning expert at development firm Jonathan Rose Cos., Daniel Hernandez, has been tapped to lead the new division. Earlier this year, de Blasio appointed Gary D. Rodney — former executive vice president for development at Omni New York LLC — to lead the HPD as president and brought on Been and several other officials with significant affordable and market rate development experience.

“It was very important for them to bring to the table what they thought were some of the hangups here,” Lynch said, noting that the level of communication he has seen so far between the HPD and the rest of the administration, as well as the industry itself, has been encouraging. “This is clearly a high agenda item [for the administration].”

--Editing by Jeremy Barker and Emily Kokoll.

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Policy Change Could Benefit New York’s Landlords and Tenants

By MIREYA NAVARRO   OCT. 9, 2014

In a policy shift that could help New York City retain its existing supply of affordable housing, the state will allow owners of hundreds of mixed-income rental buildings to sell most of their apartments as long as they permanently preserve their low-income rentals or increase their number.

The new policy guidelines apply to existing rental buildings that participate in government programs offering subsidies such as bond financing and tax breaks to property owners who set 20 percent of apartments aside for low-income households.

The affordability restrictions on these buildings typically expire after a fixed period, often 30 years or more. At that point, many owners convert their properties to condominiums and co-ops and the affordable units are lost.

The owners of many rental buildings in New York want to take advantage of a booming real estate market and sell their units, but cannot do so while the affordability restrictions on their buildings are in effect, officials and real estate industry representatives said.

Now, under a change made by the New York state attorney general’s office that is to take effect on Friday, landlords will be allowed to sell their market-rate rentals — or up to 80 percent of an individual building — in exchange for preserving or expanding the number of low-income apartments they own. Market-rate renters would be the first to be offered
the option to buy their units, officials said, and those who choose not to buy would be protected by existing rules from being forced out.

Any partial conversion plan requires the approval of city and state housing agencies, and the specific terms of the apartment sales would still have to be negotiated between owners and the agencies. But officials with the administration of Mayor Bill de Blasio said that before approving any sales the city would require owners to commit to making at least 20 percent of their units permanently affordable.

The agencies that oversee the programs — the state’s Housing Finance Agency and the city’s Housing Development Corporation and Department of Housing Preservation and Development — have collectively agreed to require the same general conditions, the attorney general’s office said.

Mr. de Blasio called the policy change a new tool “to preserve affordable apartments in perpetuity.”

Still, the changes to the so-called 80-20 programs would result in the saving of a fraction of the 120,000 existing apartments for low-income households that the mayor has vowed to preserve over the next 10 years. Neither the state nor the city had an current total for how many units the policy change may affect. But the Real Estate Board of New York, a trade group that represents owners, estimated that some 7,300 affordable apartments, most of them in Manhattan, have been built in the city as part of 80-20 buildings.

The number of owners willing to sell their units in exchange for any trade-offs imposed by the housing agencies remains to be seen. Eric T. Schneiderman, the state’s attorney general, said he expected the agencies “will be able to bring developers to the table and strike deals that, over time, deliver thousands of affordable housing units.”

Property owners, some of whom lobbied for the change, said there was little downside to the new guidelines. “It offers the opportunity for these units to be preserved, where in the past, no option for preservation was available,” said Bruce A. Beal Jr., president of Related Companies, which owns 15 mixed-income buildings in the city.
Some housing advocates lauded the news, but added a note of caution. Moses Gates, director of planning and community development for the Association for Neighborhood and Housing Development, said it was “really good” for the city and state to find new ways to preserve New York’s stock of affordable housing. But, he added, “the details have to be right and the rent-stabilization rights of the people in place have to be respected.”

Even market-rate tenants paying thousands of dollars for their apartments are protected by rent-stabilization rules under the government incentive programs. Like most conversions involving entire buildings, partial conversions would be done under noneviction plans that would give tenants the right to remain in their apartments until they chose to leave voluntarily.

The 80-20 buildings operate with incentives such as tax exemptions, low-income housing tax credits and bond financing. But the city loses hundreds of rent-stabilized units every year after the benefits expire. Figures from the Rent Guidelines Board show that the city lost a total of 1,719 rent-stabilized units last year to either the expiration of benefits or overall conversions of rental buildings to condos and co-ops.

Housing officials said the policy change takes advantage of the current robust market conditions in the city. “It recognizes the strength of the condo market right now and provides permanent affordability at no cost to the city,” said Eric Enderlin, the deputy commissioner for development in the department of housing preservation.

City officials said they would also require property owners to continue to reserve the affordable units for households at or below 60 percent of the city’s area median income — or about $50,300 a year for a household of four. By law, all units, whether owned or rented, would still share the same management. And the city and state would retain oversight for ensuring the affordable units are properly maintained, officials said.

Building owners said they would have to weigh factors like the location of a property and how much revenue it could yield against the cost of permanently subsidizing the affordable units.
“You have to look at the financial picture of each building individually,” said Paul Januszewski, vice president for planning at Rockrose Development, which owns two 80-20 buildings in Manhattan and is building another in Long Island City, Queens. “It could be a good policy but it will depend on what the additional constraints will be.”

A version of this article appears in print on October 10, 2014, on page A19 of the New York edition with the headline: Policy Change Could Benefit City’s Landlords and Tenants.
LOOKING FOR A NEW JOB?
REMEMBER THE 30-DAY RULE

As a State employee, when seeking future, non-state employment, you must comply with the 30-DAY RULE in two situations:

1. When you are approached about a job by an individual or a company that has a specific, pending matter that you are working on as part of your State job responsibilities.

2. When you want to approach an individual or entity about a potential job and that individual or entity has a specific, pending matter that you are working on as part of your State job responsibilities.

THE 30-DAY RULE HAS THREE REQUIREMENTS:

1. You must inform your supervisor and your agency’s ethics officer immediately after you have been approached about a job (even if you do not intend to pursue the job) or before you reach out, on your own initiative, to the individual or company.

2. If you intend to pursue a job opportunity, you must recuse yourself from any work relating to the individual or company. This means you cannot make any decisions or provide any input into any matter or issue involving the individual or company. You may also not be part of any discussions or communications about the matter or issue.

3. You must wait 30 calendar days from the time you (i) inform your supervisor and ethics officer and (ii) recuse yourself from all matters involving the individual or company, before you can have any conversations or communications with the individual or company about the job.

The Joint Commission on Public Ethics periodically releases Ethics Reminders. Each Ethics Reminder is a brief and easy to understand synopsis of the laws and rules under the Commission’s jurisdiction. Ethics Reminders are issued to assist those subject to the Commission’s jurisdiction in understanding and complying with their obligations under the law.

Have Questions?

Call or Email the New York State Joint Commission on Public Ethics

(518) 408-3976  * JCOPE@JCOPE.NY.GOV

All communications with JCOPE are confidential
Thinking about leaving your State job?

There are two important restrictions you need to know about when taking a new job.

**TWO-YEAR BAR RESTRICTION**

Applies for two years after you leave your State job for a non-governmental job.

Contains two different types of prohibitions.

1. **“APPEARANCE/PRACTICE” PROHIBITION:**
   - Prohibits a former State employee from interacting (in person, on the phone, or via written or electronic correspondence) in his new job with any employee in his former agency in an attempt to influence an agency decision.
   - Examples of prohibited work: (i) negotiating a contract with a former agency; (ii) submitting a response to a Request for Proposal from a former agency; (iii) requesting that the former agency take any action on a current or proposed project; (iv) submitting reports or filings to a former agency; (v) attending a meeting with a former agency; and (vi) seeking information from a former agency that is not available to the public.
   - Applies to both paid and unpaid (pro bono) work.

2. **“BACKROOM SERVICES” PROHIBITION:**
   - Prohibits a former State employee from working “behind the scenes” on a matter that is before his former agency.
   - Examples of prohibited work: (i) helping to prepare an RFP response to a former agency; (ii) working on any reports or other submissions to a former agency; (iii) helping to prepare another person for a meeting with, or presentation to, a former agency.
   - Applies to paid work only. (In other words, unpaid backroom services work is permissible.)

**LIFETIME BAR RESTRICTION**

Applies for your lifetime after you leave your State job for a non-governmental job.

- Prohibits a former State employee from providing services in relation to any case, matter, proceeding, project, application, or transaction with which he was personally involved.
- If the matter is before a New York State agency, you are prohibited from providing any type of services.
- If the matter is before any other entity, you may only provide services if you receive no compensation.

**IMPORTANT POINTS**

The two-year and lifetime bars may not apply to you if:
- you were a full-time student while working for the State
  or
- your new job will be working as an employee of a federal, state, county, or city government

Fines for violations of the two-year bar and the lifetime bar may be up to $40,000.

The application of the two-year bar and lifetime bar is very fact-specific.

In some cases, the restrictions may not prevent you from accepting your proposed job.

**PLEASE CONTACT JCOPE TO DISCUSS YOUR SPECIFIC EMPLOYMENT SITUATION OR IF YOU THINK YOU MAY QUALIFY FOR EITHER OF THE TWO EXCEPTIONS.**

(jcope@jcope.ny.gov or 518-408-3976)
WHO WE ARE

The New York State Joint Commission on Public Ethics was established as part of the Public Integrity Reform Act of 2011 ("PIRA"), which comprehensively reformed the oversight and regulation of ethics and lobbying in New York State.

The Commission -- which has oversight of the Legislative and Executive branches of State government, as well as lobbyists and their clients -- was created to restore public trust in government by ensuring compliance with the State's ethics and lobbying laws, regulations, and guidance.

The Commission provides information, education and advice regarding current ethics and lobbying laws and promotes compliance through audits, investigations and enforcement proceedings. It also promulgates regulations with respect to the conduct of State officers and employees, Members of the Legislature, and registered lobbyists and their clients.

Finally, the Commission, promotes transparency by making publicly available required disclosures filed by Statewide elected officials, Executive Branch officers and employees, Members of the Legislature and Legislative branch employees, candidates for Legislative and statewide offices, public benefit corporations, and lobbyists and their clients.

CONTACT US

If you have any questions regarding State ethics and lobbying rules or regulations, please do not hesitate to call or email the Commission at (518) 408-3976 or jcope@jcope.ny.gov
Diana Leyden, Taxpayer Advocate
Diana joined the Department of Finance as the new Taxpayer Advocate in July, 2015. After graduating from UConn Law School, she served as a Law Clerk to the Hon. Herbert Chabot, U.S. Tax Court. From there, she practiced corporate and tax exempt tax law with Steptoe & Johnson (Washington, DC), Powers & Hall (Boston, MA) and Day Pitney (Boston, MA.) In 1988, she was took a position as an appeals officer and then an Appeals Bureau manager in the Massachusetts Department of Revenue. After that, she worked as a staff attorney in the Connecticut Department of Revenue Services handling business taxes and sales taxes.

In 1999, she left the Connecticut Department of Revenue Services to write a grant for a Low Income Taxpayer Clinic at UConn Law School, her alma mater. She created that clinic and ran it for 16 years, before leaving to join the NYC Department of Finance.

In 2005, she was awarded the ABA Tax Section Janet Spragens Pro Bono Award for her work on behalf of low income taxpayers.

She is a magna cum laude graduate of Union College and holds a Masters in Tax Law (LLM) from Georgetown University Law Center.
**Procedure**

New York City Launches New Office To Provide Advocacy for Taxpayers

New York City has opened a newly created Office of the Taxpayer Advocate to serve as an independent forum for taxpayers with unresolved tax matters before the city Finance Department.

The office, first proposed in the fall of 2014 by city Finance Commissioner Jacques Jiha, was given its ceremonial launch Oct. 19 after beginning operations July 1.

Diana Leyden, a long-time director of the University of Connecticut Law School Tax Clinic, took office as the city’s first taxpayer advocate July 26.

Fully staffed since the end of September, the office has already fielded 18 complaints, department spokeswoman Sonia Alleyne told Bloomberg BNA Oct. 20.

The office will provide “a voice for individual taxpayers” and work with department staff to investigate and resolve concerns and inquiries, while also looking into “systemic issues” within the city tax agency, according to the official job description for the position.

It has already produced a city Taxpayer’s Bill of Rights, Alleyne said.

Leyden, who will report directly to Jiha, can recommend policy changes or request department action on behalf of taxpayers.

The office is available to taxpayers who “have made a reasonable attempt” to solve a problem or complaint, but weren’t satisfied by the result, according to its website.

**Addresses Errors, Seizure Threats.** Taxpayers can come forward with complaints that the department is “applying the tax laws, regulations or policies unfairly or incorrectly, or have injured or will injure” taxpayer rights. They can also claim that they face an immediate threat, such as seizure of funds or property, for a debt they believe they can show is “incorrect, unfair, or illegal.”

Other grounds for complaints include suffering “damage that is beyond repair or a long-term harmful impact if relief is not granted,” encountering a systemic problem, having “rare facts” in a case that justify help from the office or offering “a compelling public policy reason” for assistance.

The office’s services won’t be available to taxpayers who haven’t made a reasonable attempt to obtain relief through normal channels, are seeking legal or tax return preparation advice, are pursuing a legal challenge, or “are claiming that a NYC tax law or tax system violates the New York State or U.S. Constitution.”

The city also opened a new Office of Taxpayer Services in August, Alleyne said. Its director, Zal Kumar, who joined the department in 2013 as senior counsel for the audit division, was a principal drafter of the city’s 2014 corporate tax reform legislation, she said.

The taxpayer services office, aimed at practitioners and taxpayer representatives, answers substantive questions about the city’s business and excise taxes, explains department policies and legal interpretations, assists in audits and works on special initiatives, the spokeswoman said.

In a statement provided to Bloomberg BNA Oct. 20, Leyden said that her office “is open and available to every New Yorker, but it will be especially important to those who don’t have the resources to navigate the department.”

**Most Serious Problems List.** She added that in helping the department identify “systemic challenges,” the taxpayer advocate’s office hopes to craft a list of the 10 most serious tax problems in the next year.

Jiha said in a statement that the city “has a very complicated tax system that is hard to navigate, especially if you don’t have the means to hire expensive accountants and attorneys.”

He added: “We want to make sure that individual taxpayers are treated fairly and that they have a voice within the Department of Finance to advocate on their behalf.”

In 2012, Leyden was the author of the fifth edition of “Advocating for Low Income Taxpayers: A Clinical Studies Casebook and Practice Handbook.” In addition to running the UConn clinic, she also worked at state tax agencies in Connecticut and Massachusetts, after serving a U.S. Tax Court clerkship.

The official launch of the office was marked at a department conference for practitioners held with the New York chapter of the Tax Executives Institute.

**By John Herzfeld**

To contact the reporter on this story: John Herzfeld in New York at jherzfeld@bna.com

To contact the editor responsible for this story: Ryan Tuck at rtuck@bna.com


The office’s Web page is available at http://www1.nyc.gov/site/finance/about/taxpayer-advocate.page.
To request permission to reuse or share this document, please contact permissions@bna.com. In your request, be sure to include the following information: (1) your name, company, mailing address, e-mail and telephone number; (2) name of the document and/or a link to the document PDF; (3) reason for request (what you want to do with the document); and (4) the approximate number of copies to be made or URL address (if posting to a website).
The New York City conflicts of interest law, Chapter 68 of the NYC Charter, includes regulations regarding the political activities of NYC officers and employees. These rules were established:

- To prevent superiors from coercing subordinates to engage in political activity.
- To ensure that no political party’s agenda becomes confused with the public policy of any City agency.
- To prevent politicization of civil service positions.
- To make sure that public officials do not abuse their public positions for political gain.

These rules apply to all City officers and employees, although certain high-ranking public servants are subject to stricter rules regarding their political activities. Other rules may apply to certain elected officials. Contact the Conflicts of Interest Board if you have questions about any of these rules.

Q. Can I contribute to or volunteer for a political campaign?

A. Yes. Being a public servant does not diminish your rights as an American citizen to participate in the democratic process. However, there are a few rules:

- You must perform all of your political activities on your own time.
- You must not use City letterhead, supplies, equipment, or personnel.
- You may not coerce or induce fellow employees to participate in or contribute to a campaign by threatening their job or by promising them a raise or promotion.
- You may not even ask subordinates to participate in or contribute to a campaign.
• Your contribution may not be in return for your appointment or promotion as a public servant.
• If you are a high-ranking appointed official, you may not engage in fundraising for certain political campaigns.

Q. Can I run for political office and still keep my City job?
A. Yes, if you follow the same guidelines as above. But, if you are in a federally funded line, you may be subject to the Hatch Act, which would require you to quit your job in order to run for office. Contact your agency counsel for more information.

Q. Does holding a high-level City appointment entail any additional restrictions?
A. High-level appointed officials, such as deputy mayors and commissioners, who choose to run for City elective office are not allowed to fundraise for their own campaigns while maintaining their City positions. This essentially prevents most current high-level City appointees from running for City elective office.

Q. Would I have to take a leave of absence in order to run for election?
A. Many City employees would not have to take a leave. However, some employees, particularly provisional, exempt, and non-competitive employees, may be required by Mayoral Directive 91-7 to take a leave of absence during their campaign. For more information on this rule, or to see if it pertains to your position, contact the NYC Law Department.

Q. May I hold a position in a political party?
A. Most City employees may hold a position with the political party of their choice. However, an elected official, deputy mayor, deputy to a citywide or borough-wide elected official, agency head, or other high ranking public official with substantial policy discretion may not hold certain positions with a political party. Also, under Personnel Order 88/5, management employees in mayoral agencies serving in unclassified, exempt, or non-competitive titles or serving provisionally in competitive titles are not permitted to serve as officers of any political party or political organization or serve as members of any political party committee, including political party district leader.
Q. I got my current job as a result of my political activity. Do I have to continue such activity in order to keep my position?

A. Even political appointees come under the law. No one can force you to engage in political activities if you don’t want to. Every City employee should feel secure in his or her position without fear of retribution.

FOR ADDITIONAL INFORMATION, CONTACT

NEW YORK CITY CONFLICTS OF INTEREST BOARD
2 LAFAYETTE STREET, SUITE 1010
NEW YORK, NY 10007
212-442-1400 (TDD 212-442-1443)

OR VISIT THE BOARD’S WEB SITE AT
http://nyc.gov/ethics

7/04
Four Basic Rules For Leaving City Service

1) **JOB HUNTING**:  
Don’t negotiate for a job with any company you are *currently* involved with as part of your City duties. Even scheduling an interview would violate this rule.

2) **REVOLVING DOOR**:  
You must wait a *year* to *reappear* before your former City agency on behalf of your new employer. This includes calling, writing or e-mailing as well as personal visits.

3) **LIFETIME BAR**:  
If you have worked for the City on a *particular matter*, such as a contract, investigation, audit or lawsuit, you can *never* work on that same *particular matter* again for your new private employer, even after a year.

4) **CONFIDENTIAL INFORMATION**:  
The City’s confidential information is *still confidential* after you leave, so be sure not to share anything confidential with your new employer.

MORE QUESTIONS?  
**WHEN IN DOUBT, CHECK IT OUT! FREE LEGAL ADVICE FROM COIB.**  
There are plenty of additional topics not covered here that might be relevant to your personal situation, such as:  
the government-to-government exception, individual waiver, and ministerial or social appearances.  
Our attorneys will be happy to walk you through all the details you need to know.  
Call the New York City Conflicts of Interest Board at *(212) 442-1400* for free legal advice on any question you may have about how these rules impact on your personal situation.  
All questions are confidential, and you may contact the Board anonymously.
NEW YORK CITY DEPARTMENT OF FINANCE
POLICY AND PROCEDURE

Workplace
Ethics
Section 200

OUTSIDE ACTIVITIES
Policy #: 200-1

Supersedes EXEC–1-00

POLICY STATEMENT

Employees who wish to engage in outside activities in addition to their departmental employment must obtain official agency approval prior to starting such work. Outside employment and other outside activities for purposes of this policy and procedure include, but are not limited to:

♦ Paid or unpaid work with a secondary employer.
♦ Self-employment (if you, your spouse or domestic partner, or your unemancipated child own a business)
♦ Pro-bono work.
♦ Participation on a Board.
♦ Work for a non-profit organization.
♦ Volunteer activities at a not-for-profit organization, where the employee has policy-making or administrative authority.

The Department will make a determination regarding whether to approve or disapprove a request on a case-by-case basis. Factors which may be considered to determine if the request for outside activities will be granted include, but are not limited to, whether such outside activity constitutes a conflict of interest, an appearance of impropriety, or may negatively impact the employee’s work performance or attendance. In addition, permissible outside activities must not reflect adversely upon the integrity and reputation of the Department.

Employees do not need to obtain official agency approval to perform volunteer activities that do not constitute leadership at their religious organization, child’s school, or local library. Official agency approval is required, however, if employees have policy-making or administrative authority at that not-for-profit organization or a position on the not-for-profit’s board. For example, if you volunteer in the soup kitchen of a homeless shelter, no official agency approval is required. On the other hand, if you volunteer to prepare grant papers on behalf of the shelter, then official agency approval is required. Any activity as an attorney, broker, agent, officer or director for a not-for-profit organization requires prior agency approval.

Employees are expected to adhere to the provisions of this policy and procedure while on active duty, as well as when on a leave of absence. Employees are prohibited from engaging in outside activities that interfere with their assigned duties or participating in them during scheduled work hours. In addition, employees are reminded that Department of Finance premises, supplies, and equipment such as telephones, fax machines, copiers, supplies, and computers, are not to be used for any outside employment and other outside activities or any other non-City business activity, at any time.

All approvals for outside activities are valid for one year from the date of approval indicated on the request form unless otherwise stated. Employees who wish to continue outside activities beyond the assigned expiration
date must submit a new request form, at least sixty (60) days in advance of the expiration date. Approval must be obtained prior to continuing outside activities.

Requests for continued outside activities must be re-submitted annually to ensure that they remain within the specifications of this policy. If the circumstances of a previously approved outside activity changes, or there is a change in the employee’s DOF position and/or responsibilities, or if the employee wishes to engage in a different outside activity, he or she must seek approval by submitting a new request form during the current approval year. An employee may not engage in new or changed outside activity until he or she obtains approval.

SPECIFIC PROHIBITIONS

1. Chapter 68 of the NYC Charter, section 2604 (b) (6), states that no public servant shall represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city for compensation. Therefore, the following types of outside activities will not be approved for any Finance employee:

   (a) Engaging in any Federal, New York State, or New York City tax-related legal or accounting practice, tax consultation, and/or tax preparation. This does not include providing tax preparation assistance to immediate family members (such as parents, siblings, children, spouse, and in-laws) at no charge.

   (b) Any tax-related appearance before any Federal, New York State, or New York City authority and/or any Federal, New York State, or New York City court or the rendering of any tax advice in relation thereto.

   (c) The preparation of returns or reports involving any taxes administered by the City of New York, State of New York, or Internal Revenue Service for an individual or entity. This includes, but is not limited to, Sales Tax, Personal Income Tax, and Non-Resident Earnings Tax.

2. The following outside activity will not be approved for Deputy Sheriffs, employees in the Marshal’s Enforcement Unit and employees in Investigator titles:

   Participation in judgment collection work, employment with towing companies, employment as a process server anywhere or work for the NYC Marshals

3. The following outside activity will not be approved for personnel employed in the City Register Office:

   Participation in title industry activities, including, but not limited to, title research, title abstraction and document recording in New York City.

4. The following outside activity will not be approved for any employees working in Property Valuation who start employment at the Department of Finance beginning on June 5, 2013.

   During the first two years of employment, such employees are prohibited from participating in real estate activities, including brokerage, sales and appraisals, anywhere within or outside New York City. Requests for such activity will not be approved.

   Employees with two or more years of employment with Property Valuation may request to participate in real estate activities, including brokerage, sales and appraisals, outside NYC only.

5. Employees who are designated peace officers or special patrol persons and who are contemplating off-duty employment in the private security field are advised that:
(a) Peace officers may not use their duty weapons or City-owned firearms for outside employment and are prohibited from wearing or using their uniforms or shield in any manner in any off-duty employment.

(b) Employees who accept unarmed or armed private security employment must be aware that they will not, in most instances, be entitled to or receive legal representation and/or indemnification from the City of New York. These benefits of City employment are afforded to municipal employees only when they act within the scope of their employment and in discharge of official duties.

(c) An off-duty employee employed in the private security field does not, by virtue of that employment, relinquish the law enforcement power and authority conferred by the laws of the State of New York. However, when such an employee affects an arrest in furtherance of the private employer’s interest, he is acting solely on behalf of that employer, not in discharge of his duties as a City employee.

(d) City employees in their private capacity may not investigate crimes for private employers and ordinarily should be the complainant and not the arresting officer for off-duty situations which arise (for example: trespass and burglaries) unless the exigencies of the circumstances require that they act in an arresting capacity.

(e) Because the City will not ordinarily indemnify such employees against claims brought by individuals for action taken in connection with their off-duty employment, it is recommended that these employees ascertain whether their private employer maintains liability insurance covering the off-duty employment and in furtherance of employer’s interests.

(f) All court time, both arraignment and follow-up appearances, directly related to any duties and responsibilities of the off-duty employment may not be performed on Finance’s time nor may an employee receive overtime compensation from the City for such time.

(g) Employees may not engage in off-duty employment as security guards at a location where a strike, labor dispute or demonstration is ongoing.

PROCEDURES FOR REQUESTING OUTSIDE ACTIVITY APPROVAL

To request approval to engage in an outside activity, an employee must report the details of the prospective employment to his or her immediate supervisor or manager, as follows:

1. An employee must request authorization to engage in outside employment and other outside activities, including volunteer activities that require prior agency approval, on the DOF Request for Outside Activities Form. The employee must obtain DOF approval and, if necessary, the Conflict of Interest Board opinion, before engaging in the outside activities.

   Please note that the Conflict of Interest Board attorneys give guidance on Citywide conflict of interest questions. You may contact them confidentially at 2 Lafayette St., Suite 1010, New York, NY 10003 and at (212) 442-1400.

2. If an employee wants to work at a private company that does business with any City agency, the employee must also complete a “Request for a Moonlighting Waiver.” The form may be obtained from the Department of Finance Intranet: http://FinanceNet and should be completed as instructed.
3. If the outside activity is for another City agency, such activity requires the approval of both the Department of Finance and the other agency. Contact the Employee Services Unit for the required form.

4. The employee’s supervisor or manager shall forward the completed forms with his or her recommendation to their Deputy Commissioner. The Deputy Commissioner shall provide a written recommendation and forward it to the Commissioner’s designee, Marisa Caggiano, Assistant Commissioner of Employee Services, 66 John Street, 9th Floor, New York, NY 10038 for approval or disapproval. The recommendation as to whether or not to approve the outside activity is based on a number of factors, including, but not limited to, whether the proposed outside activity might interfere with the employee’s work performance or attendance.

5. In deciding whether to approve the requested outside activity, the Commissioner or designee may request additional information from the employee, the supervisor, or the Deputy Commissioner.

6. The Commissioner or designee will transmit his/her decision to the employee’s Deputy Commissioner, the employee’s supervisor or manager and the employee. A copy will also be included in the employee’s personnel file.

NOTE: This policy and procedure does not supersede the City’s Conflict of Interest Law (COIL). Employees are required to adhere to both Finance Policy #200 and the COIL.

NOTE: Employees who are on a leave of absence from the Department are required to adhere to the rules and regulations outlined in this policy and procedure.

The Request for Outside Activities form can be obtained downloaded from the Department of Finance Employee Intranet: http://FinanceNet.
MEMORANDUM

TO: Department of Finance Employees and Contractors

FROM: Jacques Jiha, Ph.D.

DATE: February 3, 2015

RE: Access, Inspection, Use and Disposal of Tax Secret & Confidential Information

This memorandum provides guidance to Finance Employees and Contractors regarding the access, inspection, use, and disposal of tax secret and other financial and/or privacy protected information ("confidential" information). If you have specific questions regarding anything contained in this memo please contact the Legal Affairs Division.

Finance routinely receives tax secret and confidential information from many sources, including individual and business taxpayers, private entities, and credit reporting agencies. Finance also receives tax secret and confidential information from the Internal Revenue Service ("IRS"), the New York State Department of Taxation and Finance, the New York State Department of Motor Vehicles ("DMV"), and other taxing authorities, pursuant to Information Exchange Agreements ("Agreements"). These Agreements, as well as specific federal, state and city statutes, prohibit the unauthorized access, inspection, use or disposal of tax secret and confidential information, and specify penalties for violations. This information remains protected even when incorporated into a new document or file created by Finance.

Finance policy prohibits the access, inspection, use or disclosure of tax secret or confidential information absent an official tax administration or legitimate business purpose. The unauthorized access, use disclosure or disposal of such information may result in disciplinary action, termination from employment, criminal prosecution, civil proceedings, and the imposition of criminal or civil penalties.

Safeguarding tax secret confidential information is critically important. Tax secret and confidential information should be stored in locked files or drawers, and should not be left on your desk or in your work area. When leaving your work area, you should log off of your machine, or minimize any screens containing confidential information. Visitors
to Finance should always be escorted by an employee when on Finance premises. Employees should never discuss confidential information or projects outside of work.

I. FEDERAL TAX INFORMATION

Finance receives federal tax information ("FTI") from the IRS pursuant to the Internal Revenue Code. FTI, which includes tax returns and return information, is confidential under Federal law. Return information is very broad, encompassing a taxpayer’s identity, the nature, source, or amount of the taxpayer’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, taxes withheld, deficiencies, overassessments, payments, or even whether the taxpayer’s return was, is, or will be examined or subject to review. Federal returns attached to City returns are not FTI, but are subject to the City’s secrecy provisions.

UNAX: Federal law prohibits the unauthorized willful access, inspection or disclosure of FTI without an official tax administration purpose. The relevant Internal Revenue Code ("IRC") provisions are known collectively as “UNAX”.

IRC § 7213: Prohibits the unauthorized willful disclosure of FTI. Violations are felonies punishable by a maximum $5,000 fine and/or five years' imprisonment, plus the cost of prosecution. Employees will immediately be terminated from employment upon conviction under this section.

IRC § 7213A: Prohibits the unauthorized willful access and inspection of FTI. Violations are misdemeanors punishable by a maximum $1,000 fine and/or one year imprisonment, plus the cost of prosecution.

IRC § 7431: Provides for a private cause of action in federal court by a taxpayer against an employee who knowingly or negligently inspects or discloses such taxpayer’s FTI. The taxpayer may be entitled an award for damages, plus the costs of the action (which may include attorneys' fees).

Incident Reporting: The IRS requires agencies receiving FTI to notify them if there are any Incidents of Unauthorized Inspection or Disclosure of Federal Tax Information. Any unauthorized access, inspection, use or disposal of FTI and/or breach in the confidentiality of FTI, is called an “incident” and must be reported to the IRS and the Treasury Inspector General for Tax Administration ("TIGTA") as soon as possible. If you discover that an “incident” has occurred, you must immediately notify a supervisor or manager and provide as much information as possible.

Post-Employment: Disclosure restrictions and penalties associated with unauthorized actions apply even after employment or contract with the agency has ended. You should be aware that you can still be prosecuted under federal law for violations committed while employed by or under contract with Finance.

Internet/Intranet and Electronic Mail: Finance policy prohibits the transmission of FTI and documents containing FTI over the Internet/Intranet unless the material is contained within an attachment to an email (not in the body) and all attached files are encrypted.

2
If FTI is included in an email, the sender must ensure the transmission is sent only to an authorized recipient(s). Emails that contain FTI should be properly labeled to ensure the recipient is aware the message also includes FTI. For example, the sender should add something to the effect: "This message contains FTI".

Wherever possible, for security, transmit only the last four digits of a TIN, i.e., SSN or EIN.

**Fax Machines:** Finance policy requires documents containing FTI to be protected when transmitted via fax. FTI must only be transmitted to authorized persons. As a result, Finance recommends the following practices when faxing FTI:

1. Have a trusted staff member at the sending and receiving fax machines;
2. Call the recipient before faxing;
3. Place fax machines in secure locations;
4. Maintain accurate broadcast lists and use preset numbers of frequent recipients of FTI;
5. Include cover sheets that explicitly provide guidance to fax recipients concerning sensitivity of the data and need for protection, notice to unintended recipients to telephone the sender and report the disclosure and confirm disposition of the faxed information.

**Labeling & Tracking the Movement of FTI:** All FTI, including paper and electronic files, and documents (such as audit work papers, reports and calculations) must be labeled as such so that anyone coming into contact with the material becomes aware that the contents includes FTI. The label may include the following inscription: "IRS Federal Tax Information-Access Restricted". This wording may be added to the front side of your documents, work papers, reports, files, folders, and media storage devices, electronically, rubber-stamped, or by hand.

The movement of FTI must be tracked within the agency from receipt through destruction through the use of logs. When using information received from the IRS, you must create a log and keep the log with your case file. It is required that you create and maintain a record identifying what kind of information was used, how was it used, where did it go within the agency and where did it eventually end up.

**Disposal of Federal Tax Information:** All documents containing FTI must be shredded when no longer needed. It should not be placed in wastepaper cans or recycle bins.

**Access to Restricted Areas:** To maintain secrecy, security and safety, Finance policy requires all employees and contractors to use their DOF-issued card key every time they access restricted areas where FTI is available. In addition, when entering or exiting through an entrance way to a restricted area, do not permit an unauthorized person to enter before the doors close.

**II. STATE AND CITY TAX SECRET INFORMATION**

The following taxes contain their own secrecy provisions: Franchise Corporation Tax, Personal Income Tax, Sales Tax, the General Corporation Tax, the Bank Tax, the
Unincorporated Business Tax, the Commercial Rent Tax, the Utility Tax, the Hotel Room Occupancy Tax, the Tax on Owners of Motor Vehicles, and Real Property Transfer Tax returns filed before January 1, 2003. In addition, Real Property Income and Expense ("RPIE") Statements and portions of Applications for Tax Exemption or Abatement are confidential.

The New York State Tax Law and New York City Administrative Code ("Code") prohibit the unauthorized access, inspection or use of tax secret information. Under Adm. Code § 11-4017, and New York State Tax Law § 1825, violations of these tax secrecy provisions are misdemeanors.

III. OTHER TAX SECRET AND CONFIDENTIAL INFORMATION

Social Security Numbers:

Social Security Numbers ("SSN’s") are protected by personal privacy laws. SSN’s may only be disclosed when specifically authorized by the Legal Affairs Division.

Finance Databases:

Finance’s FAIRTAX, Revenue Information Database ("RID"), Professional Audit Support System ("PASS"), FileNet and their successors and other computer data processing systems contain tax secret and confidential information. Accordingly, printouts of FAIRTAX, RID and PASS screens should not be disclosed unless specifically authorized in writing by the Legal Affairs Division. This prohibition does not apply to portions of the FAIRTAX Real Property Tax file that do not contain RPIE data.

Financial Crimes Enforcement Network ("FinCEN")

FinCEN is a bureau of the U.S. Department of the Treasury whose mission is to enhance the integrity of financial systems by facilitating the detection and deterrence of financial crime. Finance receives information from FinCEN pursuant to a Memorandum of Understanding with the U.S. Department of Treasury. All such information should be considered confidential, and is subject to strict rules regarding use and access and may not be redisclosed except as provided in the Memorandum of Understanding.

Vehicle Owners Private Information

Finance receives confidential and personally identifying driver information from the DMV in connection with parking violation administration. This information is maintained on the Summons Tracking Accounts Receivable System ("STARS") database, and may only be accessed or disclosed for legitimate business purposes, as authorized under federal law. STARS screens containing such information are privacy protected, and may only be disclosed when authorized by the Legal Affairs Division.

In addition, the Code requires city agencies to immediately report the unauthorized disclosure of personal identifying information such as drivers license numbers, SSN’s, and bank account numbers, to the New York City Police Department and to persons who might have had their personal identifying information breached as well. If you believe
there has been security breach involving personally identifying information, please notify your supervisor immediately.

IV. OTHER IMPORTANT CONFIDENTIALITY OBLIGATIONS

Litigation

Employees are prohibited from disclosing tax secret or privacy protected personal information in connection with any private legal action. This prohibition extends to communications with your attorney. If you believe that you must disclose confidential information in connection with a private legal action, have your attorney call the Legal Affairs Division.

Tax Administration and Enforcement Information

Employees are prohibited from disclosing information related to tax administration or enforcement by Finance. This specifically includes information related to audit selection methods, but extends to any information related to Finance’s internal operations, policies, or procedures. Employees may only disclose such information when specifically authorized by the Legal Affairs Division. Any violation of this policy will be referred to the Department Advocate for imposition of disciplinary action.

Confidentiality Out Of the Office

Employees are required to maintain the confidentiality of tax secret and privacy protected personal information at all times, including when authorized to remove such information from Finance premises. Employees authorized to remove such information from Finance premises, whether in hard copy or electronic format, should safeguard such information against unauthorized access, loss or theft. Where possible, confidential information should be kept on your person, or locked in a secure area in which only you have access.

The obligation to maintain the confidentiality of tax secret or other privacy protected personal information continues after you have left employment at Finance.
CERTIFICATION

I hereby certify that I have read and understand Finance's 2015 "Access, Inspection Use and Disposal of Tax Secret and Privacy Protected Personal Information" Memorandum. I hereby agree to abide by the provisions therein.

PRINT NAME

DIVISION

SIGNATURE

DATE
Milton Yu joined the New York City Department of Investigation (DOI) in the fall of 2014 as the Inspector General overseeing the New York City Human Resources Administration (HRA). HRA is the third largest New York City agency behind the New York City Police Department and the Department of Education, and it is the largest social services agency in the United States. HRA employs over 14,000 individuals and has an annual operating budget of $9.7 billion. HRA provides eligible New York City residents with temporary cash assistance, nutritional assistance, and administers the Medicaid program. Pursuant to Chapter 34 of the New York City Charter and Executive Order 105, Inspectors General are tasked with implementing anti-corruption measures and policy recommendations to mitigate fraud, corruption, and operational inefficiencies in the agencies they oversee. The Office of the Inspector General also handles criminal investigations arising from the misconduct of City employees. As the Inspector General for HRA, Milton manages a team comprising of Deputy Inspectors General, Assistant Inspectors General, and investigators.

Prior to joining DOI, Milton was an Assistant Attorney General in the Office of the New York State Attorney General where he prosecuted white-collar fraud cases. Prior to that Milton was an Assistant District Attorney in the Office of the Queens County District Attorney where he handled long-term investigations and prosecutions of narcotics trafficking cases. Before entering law school, Milton was a consultant at Accenture, PricewaterhouseCoopers, and Answerthink, Inc. Milton is a graduate of the Benjamin N. Cardozo School of Law and the University of California, Berkeley.
DOI-KINGS COUNTY DISTRICT ATTORNEY INVESTIGATION LEADS TO CONVICTION OF
FORMER ACS CHILD PROTECTIVE SPECIALIST FOR FABRICATING HOME VISIT AT TROUBLED HOME

MARK G. PETERS, Commissioner of the New York City Department of Investigation (“DOI”), in partnership with Kings County District Attorney Kenneth Thompson, announced the arrest and conviction of a former Child Protective Specialist with the City Administration for Children’s Services (“ACS”) on a charge of falsifying a case entry indicating the Child Protective Specialist made a home visit in July 2013 when, in fact, the mother she was supposed to have seen was in the hospital at the time of the purported visit. ACS referred the matter to DOI after discovering discrepancies in the defendant’s record-keeping.

MIMI ALLEN, 38, of Hempstead, N.Y., was arrested Tuesday, September 8, 2015, on charges of Offering a False Instrument for Filing in the First Degree, a class E felony, and Falsifying Business Records in the Second Degree, a class A misdemeanor. Upon conviction, a class E felony is punishable by up to four years in prison. The same day as her arrest, ALLEN pleaded guilty to Falsifying Business Records in the Second Degree and was sentenced to 20 hours of community service. Brooklyn Criminal Court Judge Rosemarie Montalbano presided over the guilty plea and sentencing.

DOI Commissioner Mark G. Peters said, “Child welfare workers who intentionally fabricate records to conceal their failure to comply with basic child protection regulations will be arrested and prosecuted. As this case demonstrates, DOI has zero tolerance for this type of breakdown, where City employees refuse to do their job and then falsify records to cover up their conduct. DOI will continue to work with the Kings County District Attorney and all our partners to protect New Yorkers from this kind of wrongdoing.”

Kings County District Attorney Kenneth Thompson said, “Child care protections are in place for a reason. There is no excuse for failing to do your job when it involves the safety and well-being of helpless children. Falsifying records to cover-up wrongdoing will not be tolerated and now this defendant has paid a steep price, the loss of her job, because of her poor choices.”

As a Child Protective Specialist, the defendant was responsible for investigating allegations of child abuse and neglect by conducting field visits; interviewing family members, school officials, neighbors and others to assess child safety and the risk to the children in a household; and entering and maintaining accurate and timely computerized records of the investigation, among other actions.

According to the criminal complaint and DOI’s investigation, the defendant was assigned to an ACS field office in Brooklyn, when she received allegations that a mother left her four-year-old, developmentally-delayed child without supervision. The defendant documented that she visited the family at their home on July 17, 2013 at approximately 5:30 p.m., and spoke with the mother and child, including about prenatal care, since the mother was pregnant. However, the investigation found that at the time the
defendant stated she was speaking with the mother and child, the mother was actually in the hospital because she was giving birth. The defendant closed the investigation as “unfounded” without the benefit of conducting a final interview of the mother or child in question or completing her investigation.

ALLEN was removed from her investigative caseload in July 2013, placed on administrative duties, and at the time of her resignation in August 2014 was receiving an annual salary of approximately $51,064.

DOI Commissioner Peters thanked Kings County District Attorney Kenneth Thompson and ACS Commissioner Gladys Carrión, and their staffs, for their cooperation and assistance in this investigation.

This investigation was conducted by DOI’s Office of the Inspector General for ACS, specifically Assistant Inspector General Christos Hilas and Deputy Inspector General John Bellanie, under the supervision of Inspectors General Shelley Solomon and Milton Yu, Special Associate Commissioner Susan Lambiase, Deputy Commissioner and Chief of Investigations Michael Carroll, and First Deputy Commissioner Lesley Browner.

Assistant District Attorney Hilda Mortensen from the office of the Kings County District Attorney prosecuted this case.

A criminal complaint is an accusation. A defendant is presumed innocent until proven guilty.
DOI ARRESTS FORMER CITY HUMAN RESOURCES ADMINISTRATION EMPLOYEE ON CHARGES OF THEFT AND PUBLIC ASSISTANCE FRAUD

Mark G. Peters, Commissioner of the New York City Department of Investigation (“DOI”), announced the arrest today of NAOMI MONTEROLA, a former Job Opportunity Specialist who worked in the Rental Assistance Unit of the New York City Human Resources Administration (“HRA”), on charges of defrauding the agency of more than $47,000 in funds intended for public assistance clients. DOI’s investigation began after HRA discovered discrepancies on an application submitted by MONTEROLA, specifically an invalid HRA client number, and promptly referred the matter to DOI whose investigators uncovered the scheme outlined in the complaint.

DOI Commissioner Mark G. Peters said, “This former City employee should have protected the vulnerable clients she served, instead of exploiting their situation by stealing the very funds dedicated to keep them in their homes, according to the charges. DOI will continue to work with our City government partners to identify these bad actors and protect these valuable funds.”

MONTEROLA has been charged with Grand Larceny in the Third Degree, and five counts of Welfare Fraud in the Third Degree, class D felonies; Attempted Grand Larceny in the Third Degree, Attempted Welfare Fraud in the Third Degree and thirty counts each of Falsifying Business Records in the First Degree, and Offering a False Instrument for Filing in the First Degree, class E felonies; and Official Misconduct, a class A misdemeanor. Upon conviction, a class D felony is punishable by up to seven years in prison, a class E felony by up to four years in prison, and a class A misdemeanor by up to a year’s incarceration.

According to the criminal complaint and DOI’s investigation, MONTEROLA worked at an HRA office in the Bronx and falsely registered her teenage son as a landlord in the HRA computer system, opened bank accounts in his name, and appointed herself as the custodian of those accounts. The defendant then falsely created exact duplicates of more than two dozen previously approved, and legitimate, rental assistance applications. MONTEROLA falsely designated her son as the recipient of those rental assistance benefits. The defendant then submitted those fraudulent documents for payment, and obtained and deposited those checks in her son’s bank account – cashing in on more than $47,000 in fraudulent rental assistance benefits between 2011 and 2012. The defendant is charged with multiple instances of fraud, including the initial incident reported by HRA, in which she attempted to steal more than $6,500 in public funds, according to the criminal complaint.

MONTEROLA, 39, of the Bronx, began her employment with HRA in February 2008 and was receiving an annual salary of approximately $41,101 when she was terminated in July 2013.
Commissioner Peters thanked Bronx County District Attorney Robert T. Johnson and HRA Commissioner Steven Banks, and their staffs, for their assistance in this investigation.

This investigation was conducted by DOI’s Office of the Inspector General for HRA, specifically Assistant Inspector General Bradley Howard and Deputy Inspector General John Bellanie, under the supervision of Inspectors General Shelley Solomon and Milton Yu, Special Associate Commissioner Susan Lambiase, Deputy Commissioner/Chief of Investigations Michael Carroll, and First Deputy Commissioner Lesley Brovner.

Assistant District Attorney Agata DiGiovanni of the Bronx District Attorney’s Office is prosecuting this case under the supervision of Bureau Chief of Economic Crimes William Zelenka. Detective John Might from the Bronx County District Attorney’s Office assisted in the investigation.

A criminal complaint is an accusation. A defendant is presumed innocent until proven guilty.

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DOI is one of the oldest law-enforcement agencies in the country and New York City’s corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI’s strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

DOI's press releases can also be found at twitter.com/doinews
See Something Crooked in NYC? Report Corruption at 212-3-NYC-DOI
MEMORANDUM

TO: Distribution  
FROM: Mark G. Peters  
DATE: July 10, 2014  

SUBJECT: DISCLOSURE AND REPORTING OF DOI INVESTIGATIONS

I. Authority and Purpose

1. The Department of Investigation ("DOI") investigates, among other things, the "affairs, functions, accounts, methods, personnel or efficiency of any agency" (City Charter, Ch.34). DOI is obligated to report upon its findings to ensure appropriate follow up action. Id.

2. In order to balance the competing need for confidentiality of investigations with that of informing government entities of issues for correction, the following rules are set forth governing disclosure of DOI investigations.

COMMENT

The fundamental rule regarding disclosure of DOI investigations is set forth in Chapter 34 of the City Charter, which articulates the structure, powers and duties of DOI. Chapter 34, § 803(a) and (b), provide, respectively, that DOI: (a) "shall make any investigation directed by the mayor or the council" and (b) "is authorized to make any study or investigation which, in the Commissioner’s opinion is in the best interests of the city, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency.” Section 803(c) further states in relevant part that "if for any investigation made pursuant to this section, the commissioner shall prepare a written report or statement of findings and shall forward a copy of such report or statement to the requesting party, if any." As a general matter, and except as set forth herein below, nothing in Chapter 34 specifically mandates that a DOI investigation shall remain confidential after it is completed or while it is ongoing or precludes DOI from disclosing the fact of an ongoing investigation to a third party (emphasis added).

II. Definitions

1. "Civil Investigation" shall mean an investigation of misconduct, incompetence and/or inefficiency that is not otherwise a Criminal Investigation.

Continued...
2. “Confidential Investigation” shall mean an investigation in which: (i) information has been obtained through the use of a grand jury subpoena or similarly sealed process; or (ii) the party or parties being investigated may be engaged in ongoing criminal acts and are not aware of the investigation’s existence.

3. “Criminal Investigation” shall mean an investigation in which criminal acts may have been committed. Certain Criminal Investigations may also be Confidential Investigations.

4. “Make Public” shall mean to release, on DOI’s website or otherwise, without compulsion of a subpoena, a legally valid request pursuant to the New York State Freedom of Information Law (“FOIL”) or other legal process.

5. “Mandatory Investigation” shall mean any investigation which, by law, DOI is required to conduct, including but not limited to investigations referred to DOI: by the Office of the Mayor or the New York City Council pursuant to New York City Charter, Section 803(a); by the New York City Conflicts of Interest Board (“COIB”) pursuant to Chapter 68 of the New York City Charter; and pursuant to Section 12-113 of the New York City Administrative Code (the “Whistleblower Law”).

6. “Prosecutor’s Office” shall mean any District Attorney’s Office or United States Attorney’s Office within the State of New York, the Office of the Attorney General of the State of New York, or any other office empowered to prosecute violations of the Penal Code of the State of New York or the criminal laws of the United States.

COMMENT

With respect to Mandatory Investigations, as noted, Chapter 34, § 803(a) of the City Charter provides, that DOI: (a) “shall make any investigation directed by the mayor or the council.” Section 803(c) further states in relevant part that “[f]or any investigation made pursuant to this section, the commissioner shall prepare a written report or statement of findings and shall forward a copy of such report or statement to the requesting party, if any.”

Further, DOI is required “to conduct an investigation of any matter related to the [COIB’s] responsibilities” as the COIB may direct. See Chapter 68, Section 2603(f)(1). Further to this section, “[t]he commissioner of investigation shall, within a reasonable time, investigate any such matter and submit a confidential report of factual findings to the [COIB].” Pursuant to Section 2603(f)(2), “[t]he commissioner of investigation shall make a confidential report to the [COIB] concerning the results of all investigations which involve or may involve violations of the provisions of [Chapter 68], whether or not such investigations were made at the request of the [COIB].”

The Whistleblower Law imposes additional mandates on DOI:

Pursuant to New York City Administrative Code, § 12-113(c), “[a]n officer or employee (i) of an agency of the city, or (ii) of a public agency or public entity subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter who believes that another officer or employee has taken an adverse personnel action in violation of subdivision b of this section may report such action to the commissioner.” Section 12-113(d) provides that:

(1) “[u]pon receipt of a report made pursuant to subdivision c of this section, the commissioner shall conduct an inquiry to determine whether retaliatory adverse personnel action has been taken...” [and] (3) Upon the completion of an investigation initiated under subdivision c of this section, the commissioner shall provide a written statement of the final determination to the officer or employee who complained of the retaliatory adverse personnel action. The statement shall include the commissioner’s recommendations, if any, for remedial action, or shall state the commissioner has determined to dismiss the complaint and terminate the investigation.”
Further, §12-113(e) mandates as follows:

(1) "Upon a determination that a retaliatory adverse personnel action has been taken with respect to an officer or employee of an agency of the city in violation of paragraph one or five of subdivision b of this section, the commissioner shall without undue delay report his or her findings and, if appropriate, recommendations to the head of the appropriate agency or entity, who (i) shall determine whether to take remedial action and (ii) shall report such determination to the commissioner in writing. Upon a determination that the agency or entity head has failed to take appropriate remedial action, the commissioner shall consult with the agency or entity head and afford the agency or entity head reasonable opportunity to take such action. If such action is not taken, the commissioner shall report his or her findings and the response of the agency or entity head (i) if the complainant was employed by an agency the head or members of which are appointed by the mayor, to the mayor, (ii) if the complainant was employed by a non-mayoral agency of the city, to the city officer or officers who appointed the agency head, or (iii) if the complainant was employed by a public agency or other public entity not covered by the preceding categories but subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter, to the officer or officers who appointed the head of the public agency or public entity, who shall take such action as is deemed appropriate."

III. Creation and Release of Reports on Investigations

1. Final Reports: At the conclusion of all investigations, DOI shall issue a Final Report as follows:

   (a) Where a Criminal or Civil investigation determines that no criminal acts, misconduct, incompetence and/or inefficiency have occurred, DOI shall prepare a Closing Memorandum reflecting that DOI’s investigation was unsubstantiated. Such Closing Memorandum shall not be made public and shall not be subject to FOIL.

   (b) Where a Criminal Investigation determines that criminal acts may have been committed, DOI shall send a referral letter to the appropriate Prosecutor’s Office setting forth the basic facts uncovered by the investigation along with a reference to any Penal Code provisions or provisions of federal criminal law potentially violated (“Criminal Referral”).

   (i) Where a Prosecutor’s Office has been involved in the Criminal Investigation and is therefore fully aware of all of the relevant facts, or where DOI has made an arrest prior to sending a Criminal Referral, and where the investigation was not commenced at the request of another governmental agency, DOI may dispense with the sending of a formal Criminal Referral.

   (ii) Where the facts contained in the Criminal Referral suggest a pattern of misconduct, a corruption vulnerability or other issues that, in the opinion of the DOI Commissioner require corrective action by a governmental entity, and where disclosure of the Criminal Referral is not precluded by law and will not jeopardize any future investigation or prosecution, the Criminal Referral may also be sent to the Mayor and/or to the head of the relevant governmental entity or entities.

   (iii) DOI may make such Criminal Referral public where, in the opinion of the DOI Commissioner, a specific public interest requires such publication, and where disclosure of the letter is not precluded by law and will not jeopardize any future investigation or prosecution. Any such publication shall state the public interest that requires publication.

   (c) Where a Civil Investigation determines that misconduct, incompetence, and/or inefficiency have occurred, or that a corruption vulnerability exists, DOI shall issue a report describing the
misconduct, incompetence, inefficiency and/or vulnerability and shall make recommendations for corrective action ("Civil Report"). Such Civil Report shall be sent to the Mayor and/or to the appropriate Deputy Mayor, Agency Head or other governmental entity. Such Report shall also be made public unless, in the opinion of the DOI Commissioner, publication would impede a substantial governmental function (including the confidentiality requirements of City Charter Chapter 68), an ongoing investigation, or any necessary corrective action.

(d) In addition to, and notwithstanding, subparts (a)-(c) above, at the conclusion of all Mandatory Investigations, a report shall be sent to the referring entity, or, in the case of investigations made pursuant to the Whistleblower Law, to the complainant and appropriate agency, as specified in that Law. Where the report itself does not make reference to the referring agency, disclosure of the report shall be governed by the rules for Civil and Criminal investigations set forth above. In no event shall the fact that a request for investigation was made by the New York City Conflicts of Interest Board ("COIB") or the fact that a report was sent to the COIB be made public.

2. Interim Reports: Prior to the conclusion of an investigation, DOI may issue an interim report where appropriate. Such interim reports, labeled as such, shall be governed by the relevant rules set forth above.

3. Multiple Reports: Where an investigation has both Criminal and Civil aspects, DOI may choose to issue a Civil Report and, in lieu of a Criminal Referral, may provide a copy of the Civil Report to the appropriate Prosecutor’s Office.

4. All Closing Memoranda and reports as defined and discussed herein shall be placed into the relevant case file and uploaded into DOI’s Case Management System.

COMMENT

As described in Section III.1.a, DOI is not mandated to disclose closing memoranda concerning unsubstantiated investigations, and indeed has a legal basis not to do so both in the context of FOIL and civil discovery. Under FOIL, which is contained within the New York State Public Officers Law ("POL"), DOI may withhold information concerning unsubstantiated investigations pursuant to POL § 87(2)(b), on the grounds that disclosure would constitute an unwarranted invasion of personal privacy. This principle was confirmed by a state trial court in Matter of Lewis, Index No. 116214/96, Sup. Ct. New York Co., slip op. at 23 (Sup. Ct. April 21, 1997). The “law enforcement exception” to civil discovery obligations also provides a legal rationale for DOI not to disclose information regarding unsubstantiated investigations. See, e.g., In re Dep’t of Investigation of the City of New York, 856 F.2d 481, 484 (2d Cir. 1988) (the purpose of the law enforcement privilege “is to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witnesses and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation.”)

The obligation to make referrals to prosecutors where a Criminal Investigation determines that criminal acts may have been committed, as discussed in Section III.1.b, derives from § 803(c) of the City Charter, which states in relevant part that “[i]n the event that the matter investigated involves or may involve allegations of criminal conduct, the commissioner, upon completion of the investigation, shall also forward a copy of his written report or statement of findings to the appropriate prosecuting attorney....” The obligation to recommend corrective action in the context of a Criminal Report, as contemplated by Section III.1.b.2, or to make a Civil Report recommending corrective action, as set forth in Section III.1.c, reflects DOI’s long-standing practice of making policy and procedure recommendations (“PPR’s”) to public officials regarding elimination of corruption hazards, waste, inefficiency and the like. The rationale for making PPR’s flows from § 803(b) of the Charter, which authorizes and empowers DOI “to make any study or investigation which in [the opinion of the Commissioner] may be in the best interests of the city, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency.”
The various obligations to report the findings of Mandatory Investigations, as set forth in Section III.1.d., are discussed above the Comments to Section II. The prohibition on identifying the COIB as the agency that either referred a matter to DOI or which received a report from DOI derives from Chapter 68 of the Charter. As noted above, Chapter 68, § 2603(f), mandates that DOI investigations referred to DOI by the COIB or which otherwise implicate Chapter 68 shall result in a confidential report by DOI to the COIB. See also § 2604(k)("Except as otherwise provided in this chapter, the records, reports, memoranda and files of the [COIB] shall be confidential and shall not be subject to public scrutiny").

IV. Release of Investigatory Information Prior to the Release of a Report Pursuant to Section III

Information obtained by DOI in the course of its investigations may only be released prior to the issuance of a Report (Section III) as follows:

1. Except as set forth below, information from a Confidential Investigation may not be released except to a Prosecutor’s Office with jurisdiction over the subject of the investigation. Upon the unsealing of an indictment or other publication of information by the prosecutor, this prohibition shall end. Information derived from grand jury subpoena or similarly sealed process shall in no event be disclosed, except to the Prosecutor which provided DOI with access to such grand jury material pursuant to proper procedures.

2. Where the underlying acts that gave rise to the Confidential Investigation have been the subject of public or media reports, DOI may confirm the existence of the investigation if such confirmation does not, in the DOI Commissioner’s opinion, compromise the integrity of the investigation.

3. Where the facts underlying a Confidential Investigation suggest that the City is about to enter into a contract or other agreement with a corrupt entity or individual, the Commissioner may alert the Mayor and/or the Mayor’s Office of Contract Services, consistent with governing law.

4. Information from a Criminal Investigation, or information from a Confidential Investigation which is not itself confidential (i.e., it does not contain either facts which have been obtained through the use of a grand jury subpoena or similarly sealed process, or facts pertaining to ongoing criminal acts), may be provided to any appropriate Prosecutor’s Office. Such information may also be provided to the Mayor where such disclosure is not precluded by law and will not jeopardize any future investigation or prosecution, and where, (i) in the opinion of the DOI Commissioner, the information suggests the need for immediate action, (ii) the Criminal Investigation is reasonably anticipated to become public within two business days, (iii) DOI reasonably anticipates providing the Mayor with a copy of a Criminal Referral within two business days or (iv) in the opinion of the DOI Commissioner, future investigative actions may substantially impact government operations.

5. Information from a Mandatory Investigation that is not a Criminal Investigation may be provided to the Mayor where such disclosure is not precluded by law and will not jeopardize any future investigation or prosecution, and where, (i) the subject of the investigation is already aware of the investigation and (ii) in the opinion of the DOI Commissioner, a substantial impact on government operations may be implicated.

6. Information from a Civil or Criminal Investigation, or information from a Confidential Investigation which is not itself confidential (i.e., it does not contain either information that has been obtained through the use of a grand jury subpoena or similarly sealed process; and the information does not reveal the identity of a party or parties being investigated who may be engaged in ongoing criminal acts and are not aware of the investigation’s existence), may be made public at any time where, in the opinion of the DOI Commissioner, provision of such information will promote the public interest and where such publication will not jeopardize any future investigation.

COMMENT

With regard to Section IV.1, a Confidential Investigation is defined by these rules as one in which:
(i) information has been obtained through the use of a grand jury subpoena or similarly sealed process; or
(ii) the party or parties being investigated may be engaged in ongoing criminal acts and are not aware of the investigation’s existence. Strict prohibitions and limitations exist on the ability of DOI to become aware of and redisclose to third parties grand jury material.

Grand jury secrecy exists both as a matter of federal and state criminal procedure. Rule 6(e) of the Federal Rules of Criminal Procedure governs federal grand jury secrecy. Rule 6(e)(2)(B) states in relevant part that:

“Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

(i) a grand juror;
(ii) an interpreter;
(iii) a court reporter;
(iv) an operator of a recording device;
(v) a person who transcribes recorded testimony;
(vi) an attorney for the government; or
(vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).”

Rule 6(e)(3) provides exceptions to the general secrecy rule, in relevant part as follows:

“(A) Disclosure of a grand-jury matter—other than the grand jury’s deliberations or any grand juror’s vote—may be made to:

(i) an attorney for the government for use in performing that attorney’s duty;

(ii) any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney’s duty to enforce federal criminal law; ....

(B) A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney’s duty to enforce federal criminal law. An attorney for the government must promptly provide the court that impaneled the grand jury with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.”

(emphasis added).

Section 190.25(4)(a) of the New York State Criminal Procedure Law (CPL) states that:

“Grand jury proceedings are secret, and no grand juror, or other person specified in subdivision three of this section or section 215.70 of the penal law, may, except in the lawful discharge of his duties or upon written order of the court, disclose the nature or substance of any grand jury testimony, evidence, or any decision, result or other matter attending a grand jury proceeding. For the purpose of assisting the grand jury in conducting its investigation, evidence obtained by a grand jury may be independently examined by the district attorney, members of his staff, police officers specifically assigned to the investigation, and such other persons as the court may specifically authorize. Such evidence may not be disclosed to other persons without a court order. Nothing contained herein shall prohibit a witness from disclosing his own testimony.”
Further, New York State Penal Law § 215.70 prohibits prosecutors, public officers, and public employees from intentionally disclosing the nature or substance of a grand jury proceeding, except “in proper discharge of his official duties or upon written order of the court.”

The permission under these rules for DOI to share information from a Confidential Investigation with a Prosecutor’s Office with jurisdiction over the subject of the investigation is consistent with the federal and state grand jury secrecy provisions. Thus, for example, to the extent DOI has been made privy to federal grand jury information as a result of being the recipient of a “6(e)” letter, Rule 6(e)(3)(B) specifically contemplates that DOI may issue a report to the United States Attorney’s Office that issued the 6(e) letter “to assist an attorney for the government in performing that attorney’s duty to enforce federal criminal law.” There does not, however, appear to be any authority for DOI to discuss federal grand jury material in a report to a prosecutor’s office other than the one that issued the 6(e) letter.

There is no equivalent under the CPL to a federal Rule 6(e) letter, however, State prosecutor’s offices routinely share grand jury material with other agencies participating in the investigation by “cross-designating” employees of the agency as agents of the prosecutor’s office. See People v. Anderson, 237 A.D.2d 989, 655 N.Y.S.2d 220 (4th Dep’t 1997) (“The District Attorney may pursuant to [County Law] section[] 702 . . . appoint persons employed by other governmental agencies to assist in the prosecution of matters within his jurisdiction and statutory authority.”); Chengotis v. State, 259 A.D. 369, 19 N.Y.S.2d 626 (3d Dep’t 1940) (nothing that the authority to appoint special assistant attorneys general derives from N.Y. Exec. Law (now) § 63(8)); People v. Behan, 37 Misc. 2d 911, 235 N.Y.S.2d 225 (N.Y. County Ct. 1962) (same). Thus, disclosure by DOI of state grand jury material to which we were properly afforded access, in a report to the prosecutor’s office which afforded us the access, would be proper under state law. However, disclosure of this material to a different prosecutor’s office, to a City agency or officer, or to the public without a court order, would not be consistent with the state grand jury secrecy provisions.

The prerogative to not release information where parties being investigated may be engaged in ongoing criminal acts and are not aware of the investigation’s existence is a reflection of well-established “best practices” and is reflected in the “law enforcement privilege” from disclosure, as discussed above in the Comments to Section III. The law enforcement privilege, which reflects a concern with not interfering with ongoing investigations, and protecting confidential sources, witnesses and law enforcement personnel, informs many of the discretionary judgments that DOI is entitled to make under these rules about releasing information regarding ongoing and, in some cases completed, investigations.

With regard to Section IV.3, DOI has a role under the Rules of the Procurement and Policy Board (“PPB”) to ensure that the City policy that “[p]urchases shall me made from, and contracts shall be awarded to, responsible prospective contractors only.” See PPB Rules, § 2-08. DOI’s explicit role is to conduct a Vendor Name Check at the request of a City agency, as part of the agency’s determination of vendor responsibility, “to ascertain whether the [vendor] or its affiliated individuals are or have, during a relevant period of time, been the subject of an investigation by [DOI].” PPB Rules, § 2-08(f)(1). In general, as part of an agency’s determination of a prospective vendor’s ‘responsibility or non-responsibility, agency contracting officers are required to use various sources of information, including but not limited to information provided by other government agencies. See PPB Rules, § 2-08(g)(1)(vi). Under the PPB Rules, the City’s Chief Procurement Officer, who is the executive director of MOCS, has an obligation to consult with DOI prior to making a final decision concerning a vendor’s application for a declaration of rehabilitation. See PPB Rules § 2-08(p)(5). Consistent with and further to these functions under the PPB rules, particularly the VNC function, DOI has historically informed MOCS when DOI has information about a prospective vendor that DOI believes may be material to the decision of the City to award a contract to that vendor. DOI exercises discretion about how much information to reveal to MOCS, consistent with the head to maintain an appropriate degree of confidentiality with respect to ongoing investigations. DOI plays a similar role with regard to hiring certain senior level city employees. See Mayoral Executive Order 16, Sec. 7 (July 26, 1978), as amended. These rules confirm this practice.

It should be noted that other prohibitions or limitations exist in the law with respect to the ability of DOI to access or disclose specific types of information, for example, records regarding child abuse and neglect, as set forth in § 422 of the Social Services Law. Nothing in these rules should excuse the obligation of DOI to ensure that to the extent such information is implicated in a DOI investigation, that proper and
legally sound procedures are followed to (a) obtain such information and (b) if so obtained, disclose that information to third parties.

V. Miscellaneous

1. Nothing herein shall be construed to limit DOI’s obligations or powers under the New York City Charter, or any applicable law, statute, rule, or Executive Order.

2. Insofar as the rules expressed herein conflict with the requirements of Local Law 70, Local Law 70 shall control.

3. The rules expressed herein may be modified when, in the judgment of the Commissioner of DOI and consistent with relevant law, it is in the interests of the City or the public to do so.

4. No private right of action exists or shall be implied in these rules.

5. The rules expressed herein shall be publicly posted on the DOI website.

COMMENT

With regard to Section V.1, as noted, DOI will follow proper and legally sound procedures regarding any disclosure of case-related information. These rules may not, and do not, limit or expand, and should not be interpreted to limit or expand, any legal obligation imposed on, or power afforded to DOI under the City Charter or other laws of the City of New York. See, e.g., City Charter, § 1152(a) (“This charter … shall control in respect to all the powers, functions and duties of all officers, agencies, and employees of the city as provided herein…. ”).

Similarly, with regard to Section V.3, DOI may choose to not exercise its discretion to release case-related information under circumstances deemed appropriate by the Commissioner as set forth in that section. This section is not intended, and should not be interpreted, to afford DOI the power to either: (a) suspend or modify any obligation imposed on DOI to make disclosure; or (b) make disclosure to an extent greater than that authorized by law.

Local Law 70, which established an office of the Inspector General for the New York City Police Department (“OIGNYPD”), imposes specific reporting requirements on the OIGNYPD beyond those which Chapter 34 of the Charter imposes on DOI in general. Section V.2 makes clear that to the extent the obligations under Local Law 70 are more stringent or specific than those set forth herein, the obligations of Local Law 70 shall control.

Regarding Section V.4, these rules are intended to provide guidance to the DOI Commissioner and his or her staff regarding disclosure of case related information as set forth herein. These rules are expressly NOT intended to afford third parties, including but not limited to members of the public or subjects of DOI investigations, any additional rights beyond what they may now possess to access DOI information.
DOI INVESTIGATION OF 25 CITY-RUN HOMELESS SHELTERS FOR FAMILIES FINDS SERIOUS DEFICIENCIES

Today, Mark G. Peters, Commissioner of the New York City Department of Investigation (“DOI”), announced results from a year-long investigation of 25 shelters operated and managed by the City Department of Homeless Services (“DHS”). In the Report, DOI documents how these shelters, which provide housing for approximately 2,000 of the City’s nearly 12,000 homeless families, exposed residents to serious health and safety violations such as extensive vermin infestations, blocked or obstructed means of egress, non-working smoke and carbon monoxide detectors, and improper and/or missing Certificates of Occupancy. In addition, DOI’s investigation found there was a lack of social service programs offered for homeless families at some of these locations. DOI’s investigation resulted in an array of recommendations to improve the operational oversight and management of the City’s family homeless shelters. During DOI’s investigation, DHS began implementing reforms to address the concerns raised in the report and has adopted the substance of the recommendations issued by DOI. The Report is attached to this release and is posted at the following link: http://www.nyc.gov/html/doi/html/doireports/public.shtml

DOI Commissioner Mark G. Peters said, “Dangerous living conditions, rat-and-roach infested residences, and fire violations are the stark reality facing too many homeless families and children in the City’s shelters. DOI’s Report documents the perilous conditions found at many of the 25 shelters we investigated, and recommends a plan for DHS to attack the problems we uncovered. Most of the problems are the result of years of neglect, but they continue and need to be addressed now. To its credit, DHS recognizes the need for change and is reforming the way it does business to address the concerns raised in the Report and better serve the City’s homeless families. Much work still needs to be done, and DOI will be here to monitor the progress.”

DOI initiated its investigation at the request of Mayor Bill de Blasio. In its investigation, DOI reviewed thousands of pages of documents; interviewed shelter residents; spoke with DHS officials; and inspected 25 DHS family shelters with the cooperation of DHS and the assistance of inspectors from the City Department of Buildings (“DOB”), the Fire Department of New York (“FDNY”), and the City Department of Housing Preservation and Development (“HPD”). As a result of DOI’s inspection of the 25 shelters, 621 building, housing, and fire safety violations were issued. DOI’s investigation also found that for years DHS has not used the City’s contracting process to secure providers, and failed to enforce current contracts, thereby severely diminishing the City’s ability to hold providers accountable, particularly when they fail to fix safety violations or meet standards.

DOI’s probe looked specifically at:
Five cluster buildings (which provide shelter in privately-owned residential buildings that house both private, rent-paying tenants and DHS clients)

- DOI found the cluster sites to be the worst maintained, the most poorly monitored, and provide the least adequate social services to families.
- As a result of DOI's investigation of the five sites, 223 building and fire violations were issued for serious risks such as obstructed passageways, locked exits, defective window guards and the existence of roaches, rats, and mice. Despite these violations, landlords continued to earn full rent for the apartments resulting in DHS paying two to three times market rate for housing families in these substandard facilities.
- Based on information provided by DHS, the average monthly rate for an apartment in a cluster program is approximately $2,451; while the market rate for non-DHS buildings in the same neighborhoods range from $528 a month to $1,200 a month.
- The City has a total of 16 cluster programs that encompass approximately 400 buildings, which shelter more than 3,000 families. DOI found seven of the 16 cluster programs operate without a City contract. The lack of a contract makes it extremely difficult to successfully enforce the various health and safety codes.

Nine hotels (which provide shelter to mostly single pregnant women or single parents with no more than two children)

- DOI's inspections resulted in 168 building and fire violations being issued at these facilities that included work without a permit, non-working fire alarm systems and failure to maintain carbon monoxide and smoke detectors in working order.
- A recurring complaint was the infestation of rats and mice, despite monthly and sometimes weekly extermination.
- Many of these conditions existed despite recent inspections and passing scores by DHS inspectors.
- The City is paying a monthly average rate per family of approximately $2,840. Yet, two of the hotels that DOI investigated had extensive outstanding fines for City-issued violations – more than $200,000. Unless these hotels are brought under contract, DHS will be unable to adequately protect shelter residents in hotels.
- In the City there are 48 hotels that provide shelter to approximately 2,045 families. None of the 48 hotels used by the City operate under contract.

Eleven Tier II shelters (which provide housing and services to 10 or more families)

- While DOI found these facilities to be the best maintained and provide the most social services of the three shelter types, seven of the eleven Tier II sites inspected had either an improper Certificate of Occupancy or none at all. In total, DOI found 230 building and fire violations at the 11 shelters.
- One of the most hazardous conditions observed during DOI’s investigation was at a Tier II shelter located in a City-owned building, in which a stairway was so rusted away it was declared by DOB to be an unsafe means of egress. Residents commonly avoided this stairway, leaving only one functional egress for approximately 140 families. The damage was deemed so extensive that both DOB and FDNY – summoned to the site by DOI – considered ordering the building immediately vacated. Ultimately, FDNY and DOB ordered round-the-clock fire guards – people hired to physically block the stairway – to regulate traffic in that stairway in case of fire. DHS was required to immediately submit plans to DOB and begin repairing the stairway. As a result of the investigation, the stairwell was finally repaired in September 2014. The cost to DHS for the fire guards, from June 5, 2014 to September 28, 2014, came to more than $630,000. Prior to the DOI investigation, DHS had ignored this known danger, despite observing it during DHS’ own inspections.
- In the City there are 97 Tier II facilities that provide housing for more than 7,400 families. Most Tier IIs are run by not-for-profits in non-City-owned buildings.
- DOI found three of the total 97 Tier II facilities operate without City contracts.
DOI’s recommendations, which align with reform efforts currently underway at DHS, include:

- DHS should create a three-year phased-in plan detailing how it will bring all three types of shelter facilities into contractual relationships with the City. Each contract must have enforcement mechanisms. DHS should also create a three-year plan detailing how it will increase shelter capacity that may arise from having to close noncompliant, substandard shelters.

- DHS should establish an interagency working group with the FDNY, HPD, DOB and DOI, to better ensure that safety and health violations in shelters are identified and corrected. DHS should share its data with the agencies involved and attend inspections.

- DHS should appoint an Internal Compliance Monitor to audit shelters, ensure violations and repairs are abated and fixed in a timely manner, and enforce contracts. Failure to correct should result in financial penalties for shelters.

- DHS should create a 24-month plan detailing ways in which it will provide round-the-clock security at cluster sites, and provide improved onsite casework services in cluster sites.

- Within the next three months, DHS should use its own maintenance staff to ensure that all shelter “life safety” violations it has previously identified are abated or have repairs in process. Going forward, DHS should task its own maintenance staff with primary responsibility for correcting all life safety violations in shelters.

DOI Commissioner Peters thanked DHS Commissioner Gilbert Taylor, DOB Commissioner Rick D. Chandler, FDNY Commissioner Daniel A. Nigro and HPD Commissioner Vicki Been and their staffs for their cooperation with and assistance in this investigation, with a special thanks to DOB Inspectors Ross Hoffman and Michael Geraci and FDNY Inspector Andrew Dushynskiy.

The investigation was conducted by DOI’s Office of the Inspector General for DHS, including Special Investigators Daniela Fernandez, Alexander Dillon, Nils Graham and Katerina Kurteva, Assistant Counsel Kristin DiFrancesco, Deputy Counsel Christos Hilas, Assistant Inspector General Bradley Howard, and Deputy Inspectors General John Bellanie, Kim Ryan, and Edward Richards, with assistance from intern Angela Rodriguez and Legal Fellow Geoff Crary, under the supervision of Inspectors General Shelley Solomon, John Tseng, and Milton Yu, and Associate Commissioner Susan Lambiase, and with important contributions from Chief of Investigations John Kantor and First Deputy Commissioner Lesley Brovner.
Frank was appointed as a 2014 Presidential Management Fellow and serves as the Special Park and Land Use Specialist at Gateway National Recreation Area (Gateway). And yes, he knows “special” appears twice in his title. He is under the delusion that “special” appears twice because he is extra-special.

Gateway is a complex urban park embracing an area of over 26,000 acres. It extends from Sandy Hook, New Jersey, along the south side of Staten Island, to Jamaica Bay, the Rockaways and Breezy Point in New York City. Assembled from city parks, military sites, and undeveloped land, Gateway weaves together history, nature, and recreation areas to create an extraordinary experience for visitors.

Frank and his colleagues from the Office of Business Services are responsible for managing real property throughout the park for commercial, public, and nonprofit use. Among the projects to which Frank has contributed include:

- Creating a competitive bidding process for food truck service for the beach centers at Sandy Hook, New Jersey;
- Answering a request to scatter human remains at Jacob Riis Beach in the Rockaways;
- Drafting a permit for a bird watching society to conduct a shorebird festival at the Jamaica Bay Wildlife Refuge;
- Drafting a cease-and-desist letter to a private landowner encroaching on park land; and
- Drafting a Right-of-Way permit for a military branch to install a telecommunications system within the park’s boundaries.

Frank is admitted to practice in the State of New York. He graduated from the University of Connecticut School of Law (UConn Law) with a Certificate in Tax Studies. While in law school, he was selected for the ABA Section of Business Diversity Clerkship Program, clerking for the Honorable Christine A. Ward, Court of Common Pleas of Allegheny County, Commerce and Complex Litigation, in Pittsburgh. Frank has also externed for the Taxpayer Advocate Service, IRS, in Washington, D.C., and for the Honorable Henry S. Cohn, Superior Court, Tax and Administrative Appeals, in New Britain, Connecticut.

Frank was a substantial participant in writing: Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions, in National Taxpayer Advocate 2012 Annual Report to Congress, vol. 1, 544-52.

Franks also holds an M.B.A. from the Marshall School of Business, University of Southern California (USC). He will not bore you with the details of his previous career.

A native of Queens, Frank is a die-hard Mets fan. He graduated from Queens College, City University of New York, with a B.A. in Communication Arts and Sciences.
Public Law 106–206  
106th Congress  

An Act  

May 26, 2000  

[H.R. 154]  

To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes.  

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,  

SECTION 1. COMMERCIAL FILMING.  

(a) COMMERCIAL FILMING FEE.—The Secretary of the Interior and the Secretary of Agriculture (hereafter individually referred to as the “Secretary” with respect to lands under their respective jurisdiction) shall require a permit and shall establish a reasonable fee for commercial filming activities or similar projects on Federal lands administered by the Secretary. Such fee shall provide a fair return to the United States and shall be based upon the following criteria:  

1. The number of days the filming activity or similar project takes place on Federal land under the Secretary’s jurisdiction.  
2. The size of the film crew present on Federal land under the Secretary’s jurisdiction.  
3. The amount and type of equipment present.  

The Secretary may include other factors in determining an appropriate fee as the Secretary deems necessary.  

(b) RECOVERY OF COSTS.—The Secretary shall also collect any costs incurred as a result of filming activities or similar projects on Federal lands administered by the Secretary. Such fees shall be in addition to the fee assessed in subsection (a).  

(c) STILL PHOTOGRAPHY.—(1) Except as provided in paragraph (2), the Secretary shall not require a permit nor assess a fee for still photography on lands administered by the Secretary if such photography takes place where members of the public are generally allowed. The Secretary may require a permit, fee, or both, if such photography takes place at other locations where members of the public are generally not allowed, or where additional administrative costs are likely.  

2. The Secretary shall require and shall establish a reasonable fee for still photography that uses models or props which are not a part of the site’s natural or cultural resources or administrative facilities.  

(d) PROTECTION OF RESOURCES.—The Secretary shall not permit any filming, still photography or other related activity if the Secretary determines—  

1. there is a likelihood of resource damage;
(2) there would be an unreasonable disruption of the public's use and enjoyment of the site; or
(3) that the activity poses health or safety risks to the public.

(e) Use of Proceeds.—(1) All fees collected under this Act shall be available for expenditure by the Secretary, without further appropriation, in accordance with the formula and purposes established for the Recreational Fee Demonstration Program (Public Law 104–134). All fees collected shall remain available until expended.

(2) All costs recovered under this Act shall be available for expenditure by the Secretary, without further appropriation, at the site where collected. All costs recovered shall remain available until expended.

(f) Processing of Permit Applications.—The Secretary shall establish a process to ensure that permit applicants for commercial filming, still photography, or other activity are responded to in a timely manner.

Approved May 26, 2000.
ACT TO ESTABLISH A NATIONAL PARK SERVICE (ORGANIC ACT), 1916

AN ACT TO ESTABLISH A NATIONAL PARK SERVICE,
AND FOR OTHER PURPOSES,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director, who shall be appointed by the Secretary and who shall receive a salary of $4,500 per annum. There shall also be appointed by the Secretary the following assistants and other employees at the salaries designated: One assistant director, at $2,500 per annum; one chief clerk, at $2,000 per annum; one draftsman, at $1,800 per annum; one messenger, at $600 per annum; and, in addition thereto, such other employees as the Secretary of the Interior shall deem necessary: Provided, That not more than $8,100 annually shall be expended for salaries of experts, assistants, and employees within the District of Columbia not herein specifically enumerated unless previously authorized by law. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (U.S.C., title 16, sec. 1.)

SEC. 2. That the director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments which are now under the jurisdiction of the Department of the Interior, and of the Hot Springs Reservation in the State of Arkansas, and of such other national parks and reservations of like character as may be hereafter created by Congress: Provided, That in the supervision, management, and control of national monuments contiguous to national forests he Secretary of Agriculture may cooperate with said National Park Service to such extent as may be requested by the Secretary of the Interior (U.S.C., title 16, sec. 2.)

SEC. 3. That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary or proper for he use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service, and any violations of any of the rules and regulations authorized by this Act shall be punished as provided for in section fifty of the Act entitled "An Act to codify and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by section six of the Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth United States Statutes at Large, page eight hundred and fifty-seven). He may also, upon terms and conditions to be fixed by him, sell or dispose of timber in those cases where in his judgment the cutting of such timber is required in order to control the attacks of insects or diseases or otherwise conserve the scenery or the natural or historic objects in any such park, monument, or reservation. He may also provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of any of said parks, monuments, or reservations. He may also grant privileges, leases, and permits for the use of land for the accommodation of visitors in the various parks, monuments, or other reservations herein provided for, but for periods not exceeding twenty years; and no natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public: Provided, however, That the Secretary of the Interior may, under such rules and regulations and on such terms as he may prescribe, grant the privilege to graze live stock within any national park, monument, or reservation herein referred to when in his judgment such use is not detrimental to the primary purpose for which such park, monument, or reservation was created, except that this provision shall not apply to the Yellowstone National Park. (U.S.C., title 16, sec. 3.)

SEC. 4. That nothing in this Act contained shall affect or modify the provisions of the Act approved February fifteenth, nineteen hundred and one, entitled "An Act relating to rights of way through certain parks, reservations, and other public lands." (U.S.C., title 16, sec. 4.)
Commercial Advertising

Q1. Is commercial advertising allowed within the parks?
A1. 36 CFR 5.1 allows the superintendent to give written permission for an advertisement if (1) it is of goods, services, or facilities available within the park area, and (2) it is found by the superintendent to be desirable and necessary for the convenience and guidance of the public.

Q2. Does this mean that the superintendent may allow the advertising of a service offered within the park by someone who has been issued a commercial use authorization?
A2. If the service takes place within the park pursuant to a CUA and the superintendent makes a finding that the advertisement would be desirable and necessary for the convenience and guidance of the public, then yes, the CUA service may be advertised.

Q3. Does it matter if a CUA service originates and terminates outside the park?
A3. No, as long as the service is available within the park.

Q4. Why would a park superintendent want to allow the advertising of a service that does not originate within the park?
A4. To help park visitors know that there are experiences they can enjoy within the park, even though it may mean signing up for a trail ride or renting a canoe at a facility outside park boundaries.

Q5. Who decides whether the type of advertising proposed is appropriate in form, content, size, and location?
A5. The superintendent, or the superintendent’s designee, makes that decision.

Q6. Why are concessioners allowed to advertise services or facilities that are outside the park?
A6. A determination has been made that certain types of advertising, such as that which occurs in hotel rooms or in the lobbies of hotels and restaurants, are usual and customary for these types of commercial establishments, and that this type of advertising may be authorized within analogous park establishments.

Q7. Is it okay for a horse concessioner to advertise a commercial waterslide that operates outside the park?
A7. If the superintendent believes this is usual and customary for this type of concession to carry this type of advertising, then the superintendent could authorize it.

Q8. If the superintendent feels that advertising within concession facilities is "usual and customary," but for some other reason not appropriate in a particular park’s concession, must the superintendent allow the advertising?
A8. No, the superintendent, or the superintendent's designee, may find that it is not appropriate in form, content, size, or location.

Q9. May the superintendent allow advertising of goods, facilities, or services that are not offered within the park?
A9. Except for the concessioner exception in Q6, advertisements of that sort are prohibited.

Office of Policy
August, 2008
DIRECTOR'S ORDER #53: SPECIAL PARK USES

Approved: [Signature]

Director

Effective Date: 2-23-2010

Sunset Date: This order will remain in effect until amended or rescinded

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1. PURPOSE AND SCOPE

This Director’s Order (DO) sets forth the policies and procedures for administering special park uses on National Park System lands. It supersedes all previous editions of DO #53.

National Park Service (NPS) policy guidance on special park uses is contained in section 8.6 of NPS Management Policies 2006. That guidance is summarized in, and supplemented by, this Director’s Order; however, this Director’s Order does not discuss all details of managing special park uses. For more detail on any point referenced herein, refer to Reference Manual 53 (RM-53), the companion document to this Director’s Order. For additional information, consult the Washington and regional office special park use specialists.

2. BACKGROUND

A special park use is an activity that takes place on park land or waters and meets the following criteria:

- Provides a benefit to an individual, group, or organization, rather than the public at large,
- Requires written authorization and some degree of NPS management to protect park resources and the public interest,
- Is not prohibited by law or regulation,
- Is not initiated, sponsored, or conducted by the NPS,
- Is not managed under a concession contract, and
- Is not managed through a lease.

A special park use does not include any activity managed under the Concessions Management Improvement Act of 1998 (16 U.S.C. § 5951), or any leasing activity managed under the National Historic Preservation Act (16 U.S.C. § 470h-3) or Section 802 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. § 1a-2(k)).

The Superintendent of each park unit is responsible for decisions to approve or deny requests to engage in special park uses at that particular park. This is an important responsibility. Superintendents should consult DO #75A Civic Engagement and Public Participation for guidance about notifying the public about permit fees or other special use park issues. Local decisions regarding special park uses may have Servicewide implications and set precedents that affect management of other parks. The Superintendent should consult with the regional or Washington Office special park use program manager whenever a decision on a requested use may have ramifications beyond the individual park unit.

Whether a request to engage in a special park use is approved or denied, the Superintendent’s decision must be based on consideration of relevant factors related to the request. The decision document should articulate a rational connection between the facts and the final decision. The decision should conform to NPS legal mandates, Servicewide policies, consider effects on Servicewide programs, be consistent with decisions made both at the individual park and at parks Servicewide, and be thoroughly documented in an administrative record.
3. AUTHORITIES


**General Authorities for Park Uses.** The 1916 NPS Organic Act and a 1978 amendment to the NPS General Authorities Act restrict the kinds of activities allowed within the National Park System.

The NPS General Authorities Act of 1970, as amended, includes the following language specific to authorization of park uses:

> *The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.* (16 U.S.C. § 1a-1).

Together, these laws mandate the NPS to manage park uses to protect against impairment of park resources, values, and purposes. Impairment “is an impact that, in the professional judgment of the responsible NPS manager, would cause injury or damage or harm the integrity of park resources or values…” (see Management Policies 2006 sections 1.4.4 – 1.4.5).

**Statutory Authority.** A permit for a special park use may be issued only if the applicant has a specific legal right to engage in that use, or a specific statute exists that allows the use. A right to engage in a special park use may arise from the U.S. Constitution, a treaty, statute, or existing property ownership such as an easement or certain types of mineral rights. Constitutional authority generally arises from the First Amendment, guaranteeing freedom of religion, speech, press and assembly. Statutory authority to allow a special park use may derive from general statutes (e.g. the NPS Organic Act), or a park-specific statute. The statutes most frequently cited for special park uses are:

- 16 U.S.C. §§ 1-4, for general uses
- 16 U.S.C. §§ 5 or 79, for rights-of-way
- 16 U.S.C. § 460l-6d for commercial filming and still photography

Certain other documents, such as Executive Orders, regulations, and case law may provide guidance on whether a proposed activity or special park use is allowed; however, none of these documents in and of itself authorizes any use; the Superintendent must always be able to cite an existing legal right or statutory authority for any use he or she approves.
**Delegation of Authority.** Regional Directors and Superintendents are authorized to exercise the authority of the Director to issue special park use permits with limited exceptions for right-of-way permits. Superintendents are further authorized to redelegate this authority to appropriate park employees. The redelegation must be in writing, signed by the Superintendent and identify the specific types of special park use requests covered by the delegation. The Superintendent should make this decision only after careful consideration of the following factors:

- Complexity of the proposed use
- Potential for unacceptable impacts to park resources and values
- Number of requests received annually by the park for the particular activity
- Experience of the person to whom the authority is being delegated

The written delegation of authority by the Superintendent should be retained as part of the park’s files.

Regional Directors are authorized to exercise the authority of the Director to issue new right-of-way permits, including permits for telecommunication facilities for terms of 10 years or less. Superintendents are authorized to issue renewals, conversions and amendments to right-of-way permits with terms of 10 years or less. Right-of-way permits (new, renewals and amendments) with terms greater than 10 years require the Director’s signature for approval. The delegation of signature authority for right-of-way permits set forth in this Director’s Order may not be redelegated by Regional Directors or Superintendents.

**4. POLICY GUIDANCE**

**General.** The NPS should encourage special park uses that accomplish any or all of the following:

- Support the mission of the NPS
- Add to the public understanding and enjoyment of the park
- Promote a sense of ownership and stewardship for the park and its resources
- Enhance the protection of park resources and values;
- Provide for an increased level of visitor safety.

The NPS will not issue special park use permits that:

- Create an unacceptable impact on park resources or values (see Management Policies 2006, section 1.4.7.1), or
- Are contrary to the purposes for which the park was established, or
- Unreasonably disrupt the atmosphere of peace and tranquility of wilderness, natural, historic, or commemorative locations within the park, or
- Unreasonably interfere with interpretive programs, visitor activities, visitor services, or NPS administrative activities, or
- Substantially interfere with the operation of public facilities or the services of NPS concessioners or contractors, or
• Create an unsafe or unhealthy environment for other visitors or employees, or
• Result in conflict with other existing uses.

The Superintendent may only approve a request to engage in a special park use, or any renewal of an existing use, if the use does not trigger any of the criteria above. Existing uses that trigger any of the above criteria which can not be mitigated to an acceptable limit through permit terms and conditions must be phased out.

The NPS will ensure that the special park use permit for an existing or proposed use based on a Constitutional or statutory right, or property ownership includes terms and conditions that avoid triggering the above criteria by mitigating the impacts.

5. PERMIT APPLICATIONS

There are five special park use application forms approved by the Office of Management and Budget (OMB). Parks are prohibited from creating their own application forms without OMB approval. Each of the OMB-approved application forms is discussed below.

• NPS 10-930 Application for Special Use Permit (OMB No. 1024-0026). This is a general application form used for most special park use requests.
• NPS 10-931 Application for Commercial Filming/Still Photography Permit (OMB No. 1024-0026).
• NPS 10-932 Application for Commercial Filming/Still Photography Permit (OMB No. 1024-0026).
• NCR 7.96 Parks' Application for Permit to Conduct a Demonstration or Special Event in Park Areas and a Waiver of Numerical Limitations on Demonstrations for White House Sidewalk and/or Lafayette Park (OMB No: 1024-0021) for designated units in the National Capital Region.
• Standard Form (SF) 299 Applications for Transportation and Utility Systems and Facilities on Federal Lands (OMB No. 1004-0189). This application is used for requests for rights-of-way and telecommunication permits.

As part of the “E Government Initiative,” parks should post forms 10-930 and one or both of the Commercial Photography/Filming applications (10-931 and 10-932) in PDF format on the park website at www.nps.gov.

6. PERMITTING INSTRUMENTS

The following three documents may be used to authorize a special park use.

• Special Use Permit (10-114). A Superintendent issues this document to an individual or organization to allow the use of NPS-administered resources and to authorize activities that require a permit (generally found in 36 CFR Parts 1-7). The 10-114 form becomes the front page of the permit. Appended to it are terms and conditions that apply to that
activity. The 10-114 form is signed and dated by the permittee, agreeing to the terms and conditions of the permit, and then signed and dated by the Superintendent, approving the activity.

- **Public Gathering Permit** (for parks covered by 36 CFR 7.96) is issued with terms and conditions that apply to that activity.

- **Right-of-way permit.** A Regional Director issues this document to authorize new rights-of-way, including, but not limited to, telephone lines, electric lines, telecommunication facilities, and water conduits on NPS lands. This includes those utilities not owned by the NPS, but serving the NPS and/or NPS concession facilities. The park should add park-specific terms and conditions to the templates found in RM-53. The permittee signs the permit, agreeing to the terms and conditions of the permit prior to the Regional Director signing the document approving the permit. The templates also are used to renew existing rights-of-way. Renewals are signed and dated by the permittee, agreeing to the terms and conditions of the permit then signed and dated by the Superintendent approving the permit.

**Permits Other than Special Use Permits.** The NPS issues permits other than those covered under this Director’s Order including, but not limited to permits for research, collection, the exercise of mineral rights associated with solid waste disposal, mining claims and non-Federal oil and gas, and use of natural and cultural resources as well as agreements or authorizations for specific park uses. Requirements for these permits, agreements, or authorizations are found in NPS regulations at 36 CFR and guidance can be found in the following Director’s Orders and related Reference Manuals:

- NPS Museum Collections Management – DO #24
- Cultural Resource Management – DO #28
- Wilderness Management – DO #41
- Scientific Research and Collecting – DO #74
- Natural Resources – DO #77
- Social Science – DO #78
- Commercial Use Authorizations
- Leases – DO #38/RM-38
- Agreements – NPS Agreements Handbook – a supplement of DO #20

7. **PERMITTING AND RENEWAL PROCESS**

**Reasons for Issuing a Permit.** There are three primary purposes for issuing a special use permit, regardless of type:

- To impose terms and conditions upon the activity to prevent impairment or unacceptable impacts to park resources, values, and purposes,
- To obtain the signature of the permittee agreeing to the terms and conditions of the document, and
- To establish a written description of the approved use for inclusion in the administrative record.
**Basic Requirements for Issuance.** An application to engage in a special park use must be in writing and submitted as early in the process as possible. An application fee should accompany the application, if applicable. The Superintendent evaluates the request to determine that the proposed use:

- Will not conflict with visitor uses,
- Will not adversely impact park operations,
- Will not cause unacceptable impacts to park resources and values, and
- Complies with applicable law, regulations, and policies.

**Administrative Record.** Some documents apply to the special park use program as a whole. Examples of these include, but are not limited to, procedures for processing requests, delegations of signature authority, establishment of cost recovery amounts, designation of First Amendment areas pursuant to 36 CFR 2.51 and the Superintendent’s compendium.

In addition, an administrative record for each request must be created whether the request is approved or denied. This record should contain all documents that led to the agency’s decision. It should memorialize the timeframe, discussions, and rationale behind the decision, including any monetary charges imposed, and should contain all documents related to issuance or denial of the permit, including letters, compliance documentation, notes, and a copy of the executed permit itself.

Park personnel should pay close attention to the creation of complete administrative records to accompany actions taken with respect to special use permit requests. If a permittee challenges the Superintendent’s decision in court, these documents will form the basis to support the Superintendent’s decision.

It should be noted that the NPS administrative record developed for the special park use request is separate and distinct from the "Administrative Records" provided in response to a court challenge. The "Administrative Record" filed with the court as part of the lawsuit must follow specific guidelines and formats set by the court and may require additional documents not included in the park’s administrative record.

All permits, permit denials, and the associated documents must be retained in accordance with the disposition schedule approved by the National Archives and Records Administration (DO #19 and attachment). Documents may be retained longer if the record continues to provide park management with useful guidance and information.

Because permit applications request names, social security and/or tax identification numbers parks are required to take any and all steps necessary to protect the privacy information contained in special park use administrative records and other documents.

**Compliance.** The process for granting or denying a special park use requires that the following compliance is completed and documented in the administrative record:

- The National Environmental Policy Act (NEPA). Unless the proposed special use is categorically excluded from NEPA review, the Superintendent must ensure that an environmental assessment (EA) or environmental impact statement (EIS) is prepared to
agency standards that identify reasonable alternatives both inside and outside the park, and that any additional compliance documentation is completed, including, for example, compliance with DO #77-1 (Wetland Protection) and DO #77-2 (Floodplain Management). Although the Superintendent may require the applicant to prepare the EA/EIS and other documentation, the NPS remains responsible for its content and must sign the Finding of No Significant Impact/Record of Decision FONSI/ROD.

- The National Historic Preservation Act of 1966 (NHPA). Generally, NHPA review (commonly referred to as Section 106 compliance) is incorporated into NEPA and is conducted as a step in the process. The NHPA review and final decision require consultation with the appropriate State or Tribal Historic Preservation Officer (SHPO or THPO) unless the proposed special park use has been determined to either have “no effect” on cultural resources or is a “programmatic exclusion.”

- Any other applicable law or regulation.

Regardless of who prepares the documentation, the applicant must pay all NPS costs incurred in NEPA and NHPA compliance unless exemptions to cost recovery apply (see below).

**Decision to Approve or Deny a Request.** The decision to either approve or deny a request must be based on an adequate administrative record. Approval of any special park use must be in the form of a written permit. The permit must include an expiration date and should contain, in the form of permit terms and conditions, safeguards for the protection of park resources and values. If the request is denied, the applicant must be informed in writing, and the letter must include the reason for the denial.

**Mandatory or Discretionary.** Some special park uses are expressly authorized in a park’s enabling act. The enabling law may be mandatory; that is, it may require the NPS to allow the use (“The Secretary shall permit ...”), or it may be discretionary; that is, it may allow the NPS to allow the use (“The Secretary may permit ...”). In either instance, the proposed use is considered to be both authorized and appropriate, as long as safeguards are established to protect park visitors, resources, and values.

**Right or Privilege.** The Superintendent must also determine if the request involves a right or a privilege. A right is based on property ownership, statutory or treaty entitlement, or Constitutional guarantee. In general, citizens must be afforded the opportunity to exercise their rights; however, a Superintendent may establish permit conditions to protect park visitors, resources, and values.

Where there is no identified right to engage in the use, then the use is a privilege and the Superintendent has discretion to determine whether to issue a permit for the activity and, if so, what conditions should be included in the permit. The Superintendent should consider the request carefully and develop an appropriate administrative record to document and support the decision. The Superintendent is not obligated to issue a permit for a special park use simply because a request has been made and discretionary authority for the use exists.
Legal Authorities for NPS Cost Recovery Charges, Commercial Filming and Still Photography Location Fees, and Land and Facility Use Fees. Certain statutes expressly authorize the NPS to recover costs related to special park uses and/or charge fees for the use of park lands and facilities. These include:

- 16 U.S.C. § 3a, for cost recovery for most special park uses
- 31 U.S.C. § 9701, for land and facility charges
- 16 U.S.C. §§ 460l-6d, for cost recovery and location fees for commercial filming and certain still photography activities

Cost Recovery (16 U.S.C. § 3a). The NPS may recover from the permittee all agency costs incurred in processing the application, and monitoring the permitted activity if the request is approved. Applicants should be told early in the process that they may be responsible for reimbursing the park for all costs incurred by the park in processing the application (even if the application is denied) and monitoring the permitted activity and subsequent site restoration if necessary.

Cost recovery is not charged if:

- Cost recovery charges and facility and land use fees are prohibited by law, or
- The proposed activity is an exercise of a right, such as a First Amendment activity.

The NPS unit or office that incurred the cost retains 100% of the cost recovery monies and should use the money to defray expenses. Cost recovery for all special park uses except commercial filming and still photography permits is year-end money, must be spent in the fiscal year they were collected, and cannot be held over.

Cost Recovery for Commercial Filming and Still Photography (16 U.S.C. § 460l-6d). 16 U.S.C. § 460l-6d mandates cost recovery for commercial filming and still photography permits. These costs may not be waived. The NPS unit or office that incurred the cost retains cost recovery monies and should use the money to defray expenses. Cost recovery for commercial filming and still photography permits is no-year money and is available until expended.

Location Fees for Commercial Filming and Still Photography. 16 U.S.C. § 460l-6d mandates that the NPS collect and retain location fees for commercial filming and still photography permits. Location fees are based on the number of people associated with the permit and the length (in days) of the permit. Each park must use the location fee schedule and location fees may not be waived. Most of the location fees remain in the park and can be spent on park projects.

Land and/or Facility Fee. If a land and/or facilities fee is charged by the NPS, the fee should reflect the market value of the use requested, whenever possible. In other words, the NPS should charge the use fee based on the market value of the land and/or facilities provided by the government. This value is generally determined by comparables in the vicinity of the park. When the park collects a land and/or facilities use fee based on market value it should be the only money collected from the permittee because the cost recovery is included in the calculation of market value. In no case should the NPS collect a market value fee plus cost recovery for any permits issued. The proper approach would be to deduct the amount due to the park for cost recovery from
the market value fee. The amount deducted for cost recovery is retained by the park, and the remaining amount of money must be deposited in the U.S. Treasury, unless otherwise authorized by law.

However, if the amount of costs incurred by the park equals or exceeds the market value of the land and facilities used, the park is authorized to charge and collect the full cost recovery amount (including the amount that exceeds the market value). The park retains the funds because it is cost recovery and does not charge or collect any land or facilities use fee.

**Exceptions to Collecting Cost Recovery.** In certain circumstances, the Superintendent may choose to not collect cost recovery. A decision to not collect cost recovery may be appropriate in any of the following circumstances:

- Charging and collecting are not cost-effective, or
- The Superintendent wishes to waive costs and fees as a courtesy to a foreign government, or
- The permittee is a state, local, or Federal agency on official business, or
- The Superintendent determines the proposed use will promote the specific mission of the park.

*Please note:* These exceptions do not apply to commercial filming and still photography permits. Cost recovery and location fees for commercial filming and still photography permits are required and may not be waived.

The Superintendent should carefully consider an applicant’s requests for an exemption from cost recovery charges or lands and facilities fees and must document the decision in the administrative record. It is important to be consistent and content neutral when granting these requests. Similar activities by different groups should receive similar consideration. The Servicewide implication of not recovering costs and/or lands and facilities fees should also be considered before each decision is made.

**Recreation Fees and Non-Recreational Uses.** Permittees who enter a park for recreational purposes are subject to the same entrance and expanded amenity (use) fees as the general public; however, persons engaging in special park uses that are not recreational in nature are exempt from entrance and expanded amenity fees. Examples of some non-recreational uses for which special park use permits are issued include the following:

- First Amendment activities
- Agricultural uses
- Grazing
- Commercial filming and certain still photography

For a discussion of non-recreational uses, see DO #22/RM-22.

**Closure of Park Areas.** Requests by permittees to close a park area to the general public should be considered very carefully. In general, park areas typically open to the public should not be closed to facilitate a non-public event. The regulation governing closures is found at 36 CFR 1.5 and, except
in emergency situations, requires a written determination by the superintendent justifying the closure.

**Fees Charged by Permittee.** Permittees occasionally ask to charge fees on park lands for those attending the permitted event. The special use permit does not give the permittee permission to collect admission or any other money associated with a special event while on park property. All monetary transactions must take place off park lands.

**Solicitation of Donations by a Permittee.** The Superintendent may issue a permit to solicit or accept donations in conjunction with a permitted special event or public assembly (36 CFR 2.37). The donor may not receive anything in exchange for making a donation. For example, the donor may not receive merchandise, gain entry into an event, or be allowed participation in an activity in exchange for required donation.

**Donations to the NPS.** The NPS has authority to accept donations of money, services, and commodities, but may not solicit them (16 U.S.C. 6). Therefore, NPS managers may not initiate discussion of a possible donation with any permit applicant nor may a representative of a cooperating association, friends group, or other park partner approach the applicant for a donation while the application is being considered, the permit is being negotiated, or the permitted activities are ongoing.

If a permit applicant offers to make a donation to the park, the offer must not in any way influence the Superintendent's decision on the application or the manner in which the permit is administered and monitored. The Superintendent must refrain from discussing the donation until after the permitted activity is completed. Superintendents may not accept a donation in lieu of payment for cost recovery, a land and facility use fee or a location fee.

For a discussion of donations to the NPS, see DO #21.

**Suspension of a Permitted Activity.** Suspension is an immediate action taken when the permitted activity has caused a situation where the activity needs to be stopped immediately, and temporarily withdraws a permittee’s permission to conduct a particular activity on park lands. Suspension halts the activity until the situation has been remedied. If the situation cannot be remedied to NPS satisfaction, the permit must be terminated.

**Termination of a Permitted Activity.** Termination is the permanent withdrawal of permission to conduct a particular activity often the result of a violation or breach of the terms and condition of the permit.

**Renewals.** A written application for the renewal of a special use or right-of-way permit should be considered as carefully as an initial application. The Superintendent must review each permit and associated administrative record before the existing permit expires. The review must determine whether the original findings in the administrative record remain valid and taking into account events since those findings were made. For example, the Superintendent should determine whether the activity is still mandatory or discretionary, whether it continues to be appropriate and consistent.
with the purposes of the park, and whether the permittee has adhered to the terms and conditions of the existing permit.

8. PERMIT PROVISIONS

To protect United States/NPS interests, the Superintendent shall incorporate appropriate conditions into all special park use permits. Permits should include some or all of the following provisions:

**Permit Terms and Conditions.** These provide the Superintendent a mechanism with which to protect park resources, values, and the visitor experience. The permit terms and conditions impose a legal obligation on the permittee. As such, the permit must be issued to an individual acting on his/her own behalf or bona fide representative of the organization requesting the permit. The permittee’s signature on the permit signifies acceptance of the conditions of the permit.

**Term of the Permit.** Most special park use permits may be issued for a period of up to 5 years and may be renewable on receipt of a new application. The following are exceptions:

- Permits for First Amendment activities are limited to 7 consecutive days (36 CFR 2.51)
- Permits for the sale or distribution of printed matter are limited to 14 consecutive days (36 CFR 2.52).

In both these cases a permit may be extended for the same period of time by filing a new application. Certain parks in the National Capital Region are subject to special regulations at 36 CFR 7.96 which have different time limitations for these two activities.

Right-of-way permits, including those issued for telecommunications facilities may be granted for a maximum period of 10 years and may be renewable with the receipt of an application. Permission to issue right-of-way permits for a period longer than 10 years requires a written waiver of current Management Policies signed by the Director.

**Performance Guarantee.** A performance bond or deposit guarantees the permittee’s compliance with permit conditions, provides a mechanism for reimbursement to the park for damage to resources and/or facilities resulting from the permittee’s activities, and guarantees payment of the costs incurred by the park. The guarantee amount should be sufficient to cover all anticipated costs and should be in the form of a surety bond, certified or cashier’s check, bank draft, or money order. Personal checks should not be accepted. The bond, or remainder of it, is refunded once all permit provisions are met.

**Insurance.** Liability insurance protects the government from negligent actions by the permittee that result in harm to persons or property. In most cases, as a condition of the permit, special park use permittees will be required to carry Commercial General Liability Insurance. Depending on the permitted activity, the Superintendent may require additional coverage such as proof of automobile liability insurance, pollution insurance, or special coverage for events where alcohol is served.
The permittee must show proof of liability coverage by submitting to the park the Insurance Services Office policy form (ISO, Certificate of Insurance), or its equivalent, endorsed by a company official naming the United States of America as "additionally insured." The NPS should also be listed on the certificate of insurance as a certificate holder. The certificate should show all insurance coverage, liability limits, policy numbers, effective and expiration dates, aggregate limits, and any excess or umbrella coverage.

**Hold Harmless/Indemnification.** This condition is required for all permits. It states the Federal government, its agents, and employees, cannot be held liable for property damage, bodily injury, or death caused by the permittee's use of park lands in connection with the permit and permittee agrees to pay the NPS for any costs incurred associated with any claims.

**Tort Claim Provision.** The purpose of this provision is to clarify that each agency continues to be responsible and liable for its own employees when they are occupying Federal property to the extent provided by law.

**Bankruptcy Termination.** This provision prevents park lands from being claimed as an asset or becoming involved in a settlement if the permittee ends up in bankruptcy proceedings. It is particularly important to include this statement in special park use permits involving agriculture, grazing, and rights-of-way.

**9. PERMITS TO MANAGE THE EXERCISE OF LEGAL RIGHTS**

**9.1 First Amendment Activities**

The First Amendment to the U.S. Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**General.** Freedom of speech, the press, religion, and assembly are rights, not privileges; however, the courts have recognized that activities associated with the exercise of these rights may be reasonably regulated to protect legitimate government interests. Therefore, to protect park resources and values, and to protect visitor safety, the NPS may reasonably regulate certain aspects of First Amendment activities, such as the time when, the place where, and the manner in which the activity is conducted. Note that it is the conduct associated with the exercise of these rights that is regulated, and never the content of the message.

First Amendment activities are not subject to entrance fees. No matter how time consuming it may be for the park to manage First Amendment activities, cost recovery, insurance and bonding may not be required since the inability to pay cost recovery or obtain insurance or a bond might prevent the exercise of a Constitutional right.

NPS regulations pertaining to First Amendment activities are found at 36 CFR §§ 2.51 and 2.52. A First Amendment permit generally must be approved or denied within 2 business days of receipt.
of a proper application. NPS regulations for designated park units in the National Capital Region are found 36 CFR § 7.96(g), which contains a 48-hour response requirement. Management Policies 2006, section 8.6.3, also addresses First Amendment activities.

**Religion.** The First Amendment’s Establishment Clause prohibits the government from supporting or promoting a particular religion, religious view, or religious organization if it involves an “excessive entanglement with religion.” It does not, however, prohibit the NPS from allowing religious activities in park areas in the same way it would allow the exercise of any other First Amendment activity.

**Equal Protection.** Allowing one group to use an area may set the precedent for subsequent requests. The principle of equal protection generally means the NPS may not issue a permit for one group to engage in activities while prohibiting others under similar circumstances. Additionally, the NPS may not impose any obligations or restrictions on First Amendment activities that are not similarly imposed on regular visitors and special events. Any restraints imposed on activities must be administered even-handedly to all groups and individuals who are engaging in similar activities, regardless of the content of their views expressed as part of those activities. The Superintendent and park staff should be particularly careful to be neutral in his or her judgment, and not favor organizations with which they may be personally familiar, or whose "message" they may personally support.

**Political Events.** Political events may qualify either as First Amendment activities or special events. First Amendment activities include public demonstrations, assemblies, marches or other similar forms of public expression of opinions. Examples of an aspect of a political event that may be treated as a special event may include fund-raisers, charitable races and invitation-only receptions that are not open to the general public.

**Political Activities and the Hatch Act.** The Hatch Act establishes general provisions governing participation in political activities by executive branch employees (5 CFR 734.101). The Hatch Act also prohibits political activity “in any room or building occupied in the discharge of official duties.” Outdoor political activities held at NPS units including, but not limited to, rallies, speeches, press conferences, and photo-ops that use recognizable NPS resources as a backdrop may be permitted if otherwise consistent with NPS regulations. NPS employees may provide logistical support or other services to permitted political events. Employees may actively participate in a permitted event only when off duty and in civilian clothes so to not imply NPS endorsement of the event. Superintendents should contact their regional solicitor for guidance if they have any questions.

**Sale of Printed Matter.** The sale of certain printed matter in connection with a First Amendment activity is allowed, generally subject to a permit, as provided in 36 CFR § 2.52 or 36 CFR § 7.96(k). The term “printed matter” under 36 CFR § 2.52 is defined, at 48 Federal Register 30272 (1983), as textual printed material such as books, pamphlets, magazines and leaflets whose primary purpose is the advocacy, definition, or explanation of a group’s or individual’s political, religious, scientific, or moral beliefs. Title 36 CFR § 7.96(k) defines what printed material may be sold in its applicable park areas. Other message-bearing merchandise such as t-shirts and mugs may not be sold.
9.2 Native American Rights

The NPS will be as unrestrictive as possible in permitting American Indian tribes, Native Alaskans, Native Hawaiians, and other Pacific Islanders access to and use of traditional sacred resources for customary ceremonials. Specifically, to the extent feasible and allowable by law, the NPS will permit members of Native American tribes or groups access to park areas to perform traditional religious, ceremonial, or other customary activities at places that have been used historically for such purposes, provided the use does not damage park resources. The NPS will not direct visitor attention to the performance of religious observances unless the Native American group so wishes. (See NPS Management Policies 2006 section 5.3.5.3.2)

Requests for First Amendment activities from Native Americans are subject to the same scrutiny as other First Amendment requests. Permits for First Amendment activities are subject to time, place, and manner restrictions and should be issued with appropriate terms and conditions that protect park resources and values.

10. PERMITS RELATED TO LAND USE RIGHTS AND PRIVILEGES

10.1 Water (Riparian) Rights

Special park uses may involve the diversion, conveyance, and use of water by third parties by virtue of a pre-existing water right or by virtue of the sale or lease of NPS water.

10.1.1 Pre-Existing Water Rights

Pre-existing water rights may be present in a park when such rights were established prior to the creation of the park or when private lands are acquired for incorporation into the park. Such rights may involve the diversion, conveyance, and use entirely within the park, or diversion and conveyance within the park to a place of use outside the park. Though pre-existing rights will have limitations based on state law, Special Use Permits may be required by the park for required maintenance and construction of infrastructure to protect park resources.

10.1.2 Sale or Lease of NPS Water

Requests may be made by third parties to lease or purchase water from a park for use outside the park. If such a request is made pursuant to 16 U.S.C. § 1a-2(e), they are governed by Director’s Order 35A (DO #35A). DO #35A authorizes, within the discretion of the Superintendent, such sale or lease to third parties if such parties provide public accommodations or services and if there are no reasonable alternatives. In addition, the use of the water must not cause an unacceptable impact to park resources or visitors nor lead to a dependency or increased demand on park water resources.

For more information water rights and the sale or lease of water on park lands, see DO #35A or contact the Water Rights Branch of the Water Resources Division in the Natural Resource Program Center.
10.2 RIGHTS-OF-WAY

Definition. A right-of-way (ROW) permit is a permit issued by the NPS to a third party to pass over, under, or through a NPS owned or controlled area, is discretionary and revocable, and does not convey or imply any interest in the land.

Authorities. The NPS may issue right-of-way permits only for those uses or activities specifically authorized by Congress and only if there is no practicable alternative to the use of NPS lands. If a legal authority for a requested use is not found, the park must deny the use. If an unauthorized right-of-way already exists, the park should contact the regional special park use program manager for guidance on a resolution.

Utilities. The authority for a utility right-of-way through park lands is found in 16 U.S.C. § 5 for radio, television, and other communication transmitting and receiving structures, facilities, and antennas (including cellular sites); and 16 U.S.C. § 79 for electric power, telephone, and telegraph lines, and water conduits (including sewer lines). In a few cases, park-specific laws contain additional authority for an individual park area.

Pipelines. No general authority exists for the NPS to issue a ROW for oil, gas, natural gas, synthetic liquids, gaseous fuels, or other refined product pipelines through parklands. Superintendents need to be familiar with their park’s enabling act, since individual parks may have park specific authority to allow pipelines. Oil and gas lines that serve NPS facilities may be allowed through a utility contract between the service provider and the NPS under 16 U.S.C. § 1-3, so long as these lines serve only NPS facilities.


General Guidelines. The following general rules govern issuance and renewal of right-of-way permits:

- A right-of-way permit is issued at the discretion of the NPS is revocable, and does not grant any interest in the land.
- A right-of-way permit is not required when property ownership, such as a previously recorded deeded easement, is involved.
- NPS policy is that right-of-way permits are issued for terms not to exceed 10 years. Permits with terms of longer than 10 years must be signed by the Director.
- Initial permits must be approved by the Regional Director. Subsequent renewals and/or amendments may be approved by the Superintendent.
- The right-of-way permit shall include appropriate terms and conditions to protect park resources and values.
- Permit terms and conditions shall include NPS monitoring of permitted construction, maintenance, restoration, and repair for the duration of the permit, and require the permittee reimburse the park for all costs incurred.
• Permits must contain a condition for removal of the facility and restoration of the right-of-way at the end of the permit.
• NPS-owned utilities do not require a right-of-way permit.

For all right-of-way permit applications, the Superintendent should:

• Request a preliminary meeting with the applicant. For large, controversial, or complex proposals, these meetings should be required. These meetings allow the Superintendent to explain park procedures and concerns to the applicant and learn about the applicant’s timeframes and other concerns.
• Hold meetings with the applicant during the decision process as necessary, but especially if the Superintendent is considering denying the application. These meetings should take place prior to written notification of denial.
• Ensure that compliance actions and reviews, such as NEPA and Section 106, are conducted expeditiously consistent with applicable statutes.
• Approve or deny the request in writing.

Wilderness. No permanent road, structure, or installation (including the installation of utilities) is allowed within any eligible, study, proposed, recommended, or designated wilderness area, except as specifically provided by law. The NPS will not issue any new right-of-way permits, or widen or lengthen an existing right-of-way, in any eligible, study, proposed, recommended, or designated wilderness area. See the Wilderness Act, 16 U.S.C. 1131-1136, and DO #41 (Wilderness Preservation and Management), or consult the Chief, Wilderness Stewardship and Recreation Management for additional information. (Management Polices 2006, Section 6.4.8). ANILCA Title XI addresses transportation and utility systems in designated wilderness.

10.2.1 Linear Rights-of-Way

Linear rights-of-way usually involve utilities such as telephone and electrical lines and poles, canals, ditches, or water conduits.

• A linear right-of-way generally consists of a long, narrow corridor. The width of the right-of-way is described as a distance from a centerline.
• Where possible, taking into account both park resources and economic factors, new utility lines should be placed in conduit and underground.
• Each utility in a right-of-way requires a permit from the park. For example, power lines may not be added to existing, permitted telephone poles without a right-of-way permit from the park. (In this example, a permit would not be issued until written confirmation of an agreement between the two utility companies, over the use of the poles, was received by the park.)
• Permittees wishing to add equipment of the type authorized by their right-of-way permit may need to request a permit amendment if the total number of lines in the permitted right-of-way increases (for example, adding additional telephone lines to existing, permitted telephone poles).
10.2.2 **Wireless Telecommunication Facilities** (including, but not limited to cellular, microwave, television, and radio).

A wireless telecommunication facility is authorized using a right-of-way permit. Statutory authority to issue a permit authorizing a wireless telecommunication facility is found at 16 U.S.C. 5. When considering a request for a telecommunication facility, the Superintendent will consider the entire footprint of the facility including, but not limited to, the tower, any equipment buildings, power and telephone lines, and means of access.

Applications for personal wireless communication facilities should only be accepted from a Federal Communications Commission licensee authorized to provide the proposed service(s) in the specific area or from a Federal agency with authorization from the National Telecommunication and Information Agency, part of the Department of Commerce. In addition, applications for personal wireless communication facilities must be processed, as closely as possible, according to the timeline and steps enumerated in RM-53.

Currently, WiFi (wireless fidelity or wireless local area networks) does not utilize a licensed portion of the Federal spectrum. If the park receives a request for installation of WiFi equipment on parklands, staff should consult the Washington Special Park Uses Program Manager.

Additional guidance is found in NPS *Management Policies, 2006*, Section 8.6.4.3, and in RM-53.

10.3 **Roads and Highways**

The NPS has limited legal authority to allow the construction of non-NPS roads and highways on park lands. Superintendents should work closely with NPS regional staff when considering a request for the use of park lands for any type of road or highway. Additional guidance is found in DO #87A for Park Roads and Highways and DO #87D for non-NPS Roads.

10.4 **Agricultural Use**

The use of parklands for agricultural use could be a right, such as a reserved use, or a privilege, approved as a discretionary decision by the Superintendent.

Agricultural activities may be conducted on park lands only if the use is:

- Specifically authorized by a park’s enabling act or other law, or
- Required under a reservation of use rights arising from the acquisition of the property, or
- Conducted as a necessary and integral part of a recreational activity, or
- Required in order to maintain a historic scene.

If the park’s enabling act includes agricultural use, that law should be closely examined to determine whether the authorized use is a right or a privilege. The enabling act may allow the continued use of park lands for agriculture without a permit, may require the park to issue a permit under certain terms and conditions, or give the park discretionary authority to issue a permit. The enabling act may also dictate the extent to which the park may exercise oversight of agricultural use and charge cost recovery and land use fees. If the enabling act allows the continued use of park
lands for agriculture without a permit, the park should establish a good working relationship with the individuals using park lands to ensure the protection of park resources.

If the continued use of park lands for agriculture is required as a result of a reservation of use rights arising from the acquisition of the property, the deeds should be examined closely to determine the extent of the reserved right. There may be limits associated with the reservation of use, such as type of crops or the number of years the reservation remains in effect. The park should establish a good working relationship with the individuals using park lands to ensure the protection of park resources.

If agricultural use does not appear in the park’s enabling act, and is not a reserved use, the Superintendent may find authority to issue a special use permit under the general authority of 16 U.S.C. § 1-3 and the park’s enabling act. However, the Superintendent should issue a permit authorizing the requested use only if NPS planning documents for the park include the objectives of restoring or perpetuating cultural or natural landscapes and the requested use meets those objectives without causing damage to resources.

In permitting agricultural use of NPS lands, the NPS should foster best management practices that conserve soil, protect natural waterways and groundwater, control proliferation of diseases, exotic plant species and noxious weeds, and avoid contamination of the environment. The Superintendent should weigh carefully the benefits and potential impacts of the requested use. He or she should give special consideration to riparian areas, wetlands, and protection of threatened or endangered species and their habitats. A permit must not be issued if the requested activity would result in unacceptable impacts to any natural or cultural resource.

10.5 Domestic Livestock Management

General. Parks that permit livestock use, or where livestock use is managed by other agencies, must develop a livestock management plan. The NPS may issue a special use permit authorizing livestock use only when the use is:

- Specifically authorized by a park’s enabling act or other law, or
- Required under a reservation of use rights arising from the acquisition of the property, or
- Conducted as a necessary and integral part of a recreational activity, or
- Required in order to maintain a historic scene.

If the park’s enabling act includes livestock use, that law should be examined closely to determine whether the authorized use is a right or a privilege. The enabling act may allow the continued use of park lands for livestock use without a permit, may require the park to issue a permit under certain terms and conditions, or give the park discretionary authority to issue a permit. The enabling act may also dictate the extent to which the park may exercise oversight and charge cost recovery and land use fees.

If the enabling act allows the continued use of park lands for livestock use without a permit, the park should establish a good working relationship with the individuals using park lands to ensure the protection of park resources and values.
If the continued use of park lands for livestock use results from a reservation of use rights when the NPS acquired the property the deed(s) should be closely examined to determine the extent of the reserved right, or limits of the reservation of use such as:

- Type or number of animals
- Number of years the reservation of use remains in effect.

If the park’s enabling act does not address livestock use, the Superintendent may find authority to issue a permit under the general authority of 16 U.S.C. § 1-3. The Superintendent should issue a special park use permit authorizing the requested use only if the use is an integral part of a recreational activity, or if NPS planning documents for the park include the objectives of restoring or perpetuating cultural or natural landscapes and the requested use meets those objectives without causing damage to resources.

The Superintendent should consider denying livestock use that has the potential to cause unacceptable impacts to park resources, values, or purposes. In particular, livestock uses that deplete or degrade non-renewable resources, or whose effects cannot be mitigated, must not be allowed. Best management practices on grazing intensity, frequency, duration and timing should be followed. The use of pelletedized feed or certified weed free forage that meets the North American Weed Management Association’s standards should be in the permit for all pack and saddle stock while on the trail to avoid the introduction of exotic species or noxious weeds.

The Biological Resource Management Division (Natural Resource Program Center) can provide additional technical and policy support on assessing agricultural impacts. For more information on permitting livestock activities, see also DO #38 (Property Leasing), DO #77/RM-77-3 (Domestic and Feral Livestock Management), and NPS Management Policies 2006, section 8.6.8 (Domestic and Feral Livestock Management) and 4.4.4 (Management of Exotic Species).

**10.6 Reservations of Use and Occupancy**

It is the intention of the National Park Service (NPS), when it purchases property, to remove any encumbering structures and restore the site to as close to original condition as possible. The reserved use and occupancy contract can not legally be extended. Properties may continue to be occupied through a lease (see Director’s Order #38: Property Leasing), or in limited circumstances a special park use permit for temporary residency in an NPS structure provided a determination has been made that:

- Issuing the permit is in the best interest of the park and the United States; and
- the use will not result in impairment or unacceptable impacts of park resources and values or be in conflict with the purposes for which the park was established;

and

- One or more of the following circumstances are met:
  1. Specific legislative authority exists to allow temporary residency; or
  2. The NPS is unable to implement the directives of park planning documents; or
  3. The structure has or may have historic significance that would be endangered if it were vacated; or
4. Extreme environmental conditions temporarily prevent the occupant from vacating the structure; or
5. The structure has served as the primary residence for the holder of the expired reservation of use and occupancy contract and the termination of the residency would create an undue hardship on the occupant.

Under a special park use permit the permittee will be charged a fee for the use of the facility, resource, or property based upon comparable prices in the local market (fair market value). The park will retain an amount equal to costs associated with issuing and managing the permit with the balance deposited into the general treasury. The special park use permit does not grant any interest in the land. *(See Reference Manual 53, Appendix 14.)*

10.7 Non-Federal Mineral Interests

The NPS has adopted regulations to specifically address the exercise of certain nonfederal mining and mineral interests. These activities are also addressed in NPS Management Policies 8.7, but Director's Order 53 does not address these nonfederal interests. In the case of mining operations where the mining rights arise from the 1872 Mining Law, the NPS has promulgated regulations at 36 CFR 9A and for nonfederal oil and gas operations, the regulations at 36 CFR Part 9B.

However, nonfederal mineral interests not subject to the regulations of 36 CFR 9A-9B, may be required to apply for a special use permit under 36 CFR 5.7 or another applicable regulation, in order to protect the lands and waters administered by the NPS. For example, if a person has an easement or other property right within the boundaries of a park and proposes to undertake exploratory or extraction activities within the easement, the park may require a permit with conditions to prevent adverse impacts on the park land. *(see NPS Management Policies 2006 § 8.7.3.)* Application of such permit conditions should not result in a taking of private property without just compensation.

11. PERMITS RELATED TO SPECIAL EVENTS OR VISITOR ACTIVITIES

11.1 Special Events

*General.* Special events, such as sporting events, pageants, celebrations, regattas, public spectator attractions, entertainment, ceremonies, historical reenactments, fairs, and festivals are activities that fall under the category of privileges. Special events differ from public assemblies and public meetings in that the latter activities are rights protected by the First Amendment. Requests for special events should be processed as expeditiously as possible. Special events may be subject to a wide range of permit terms and conditions intended to protect and minimize impacts on park natural and cultural resources and visitor activities and are subject to cost recovery. The permitted activities may be required to pay a facility fee as well obtain insurance and/or submit a performance bond.

In determining whether to grant a special park use permit for a special event, the Superintendent must apply the criteria spelled out at 36 CFR § 2.50, or, for designated park units in the National
Capital Region, the special regulations at 36 CFR § 7.96(g). The Superintendent also should take into account any park specific special regulations that might exist. These regulations allow special events, subject to a permit, provided all of the following apply:

- There is a meaningful association between the park area and the event, and
- The event contributes to visitor understanding of the significance of the park.

Note that these criteria should be interpreted generously to allow appropriate uses. Most special park use applicants want to hold their activity in a national park to benefit from an association with the park’s message or so the participants can appreciate the scenery or other significance of the park. For example, a Superintendent may choose to issue a permit for a breast cancer awareness walk-a-thon in an historic park on an established road or sidewalk. In addition, the NPS will not permit a special event that is conducted primarily for the financial benefit of organizers or participants, or is commercial in nature. Further guidance for special events is found in NPS Management Policies 2006, section 8.6.2 and for appropriate uses section 1.5, 8.1.1, and 8.1.2.

If a special park use request meets the above approval criteria, it still must be denied if the Superintendent finds that any of the following applies:

- The event would cause unacceptable impacts to park resources or values, or
- The event would be contrary to park purposes or would unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative locations within the park, or
- The event would unreasonably interfere with interpretive, visitor service, or other program activities, or NPS administrative activities, or
- The event would substantially impair the operation of public facilities or services of NPS concessioners or contractors, or
- The event would present a clear and present danger to public health and safety, or
- The event would result in significant conflict with other existing uses.

The Superintendent should apply these criteria from 36 CFR 2.50 carefully. Consistent application of these criteria will result in the timely processing of permit requests, reduce the possibility of permits being denied without good cause, and ensure a more uniform Servicewide process.

For further discussion on unacceptable impacts, see NPS Management Policies 2006, section 1.4.7.1. For further discussion of considerations relevant to granting or denying special use permits, see Management Policies 2006, section 8.6.2.1, and 36 CFR § 7.96(g) (special considerations for the National Capital Region).

Sale of Food or Merchandise. In certain circumstances, food and merchandise may be sold as a part of a special event under a commercial use authorization (CUA). More information is found in DO #48B/RM-48B.
Cooperating associations and NPS authorized concessioners may sell merchandise within their designated sales areas in accordance with their agreement with the NPS.

Fireworks Display. Firework displays will not be considered if it poses an unacceptable risk of wildland or structural fire, will cause unacceptable impacts on park resources or values, or will jeopardize public safety. The Superintendent, following consultation with the Regional Safety Manager, Regional Structural Fire Program Manager, and the Regional Wildland Fire Manager, may approve such displays. The permittee must comply with the requirements of the National Fire Protection Association handbook, Code for Outdoor Display of Fireworks (NFPA 1123). Additional guidance is provided in RM-53.

11.2 Commercial Filming and Still Photography

Section reserved until the Department of the Interior regulation on commercial filming and still photography (43 CFR Part 5) is finalized.

11.3 Native American Cultural Demonstrations

Section reserved for future use.

12. SPECIAL CONSIDERATIONS FOR NPS UNITS IN ALASKA

General. The special park use policies discussed in this Director's Order and Reference Manual 53 apply to national park units in Alaska. However, when reviewing a special park use application for park lands in Alaska, the Superintendent also must consider the provisions of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and its implementing regulations. NPS managers in Alaska must be familiar with 43 CFR Part 36, 36 CFR Part 13, and all applicable titles of ANILCA (16 U.S.C. § 3101).

Key ANILCA provisions are summarized below.

Transportation or Utility Systems. Title XI of ANILCA establishes a specific process for application, review, and approval of any transportation or utility system (TUS) in Alaska park units. As elsewhere in the National Park System, approval of a TUS in Alaska parks requires an existing statutory authority. If there is no existing authority, new legislation will be necessary if the requested use is to be allowed.

Access to In-holdings. Section 1110(b) of ANILCA requires the Secretary of the Interior to give in-holders rights necessary to assure adequate and feasible access for economic and other purposes, subject to reasonable regulation to protect the park. Section 1110(b) is an authority for granting access to in-holdings in Alaska units. Access to inholdings can be authorized across designated wilderness if necessary to provide "adequate and feasible" access. Also consult the Alaska Region Interim Guide to Accessing Inholdings in national Park System Units in Alaska.

Special Access. Section 1110(a) of ANILCA authorizes the use of snow machines (during periods of adequate snow cover or frozen river conditions), motorboats, airplanes, and non-motorized
surface transportation methods for traditional activities permitted by law, and for travel to and from villages and home sites.

**Temporary Access.** Section 1111 of ANILCA authorizes temporary access across Alaska national park units for survey, geophysical, exploratory, or other temporary uses of non-Federal land, provided access is necessary and will not result in permanent harm to park resources.

**Effect on Subsistence Uses.** Any action to permit the use of park lands in Alaska requires an evaluation of the effect on subsistence uses authorized by section 810 of ANILCA.

**Access to Subsistence Resources.** Section 811(a) of ANILCA authorizes the appropriate use of snowmobiles, motorboats, and other means of surface transportation traditionally employed for subsistence purposes, subject to reasonable regulation.

--------End of Director’s Order-------
Location Fees and Cost Recovery for Commercial Filming and Still Photography

On April 13, 2006 the National Park Service published a final rule in the Federal Register that allows the NPS to implement Public Law 106-206 (P.L. 106-206), codified at 16 U.S.C. 460l-6d and amends the commercial filming and still photography regulation found at 43 CFR 5.1.

As of May 15, 2006 the following procedures/guidelines apply to issuing permits for commercial filming and still photography.

1. **All commercial filming requires a permit.** Commercial filming is defined as digital or film recording of a visual image or sound recording by a person, business, or other entity for a market audience, such as for a documentary, television or feature film, advertisement, or similar project. It does not include news coverage or visitor use.

2. **Still photography activities require a permit only when:**
   a. the activity takes place at location(s) where or when members of the public are generally not allowed; or
   b. the activity uses model(s), set(s), or prop(s) that are not a part of the location’s natural or cultural resources or administrative facilities; or
   c. the park would incur additional administrative costs to monitor the activity;
   d. The park needs to provide management and oversight to:
      1. avoid impairment or incompatible use of the resources and values of the park, or
      2. limit resource damage, or
      3. minimize health or safety risks to the visiting public.

3. **News coverage does not require a permit,** for either filming or still photography, but is subject to time, place, and manner restrictions, if warranted, to maintain order and ensure the safety of the public and the media, and protect natural and cultural resources.

4. **Congress in P.L. 106-206 expressed the importance of resource protection and provided that the permit request should be denied if:**
   a. there is the likelihood that resource damage would occur that cannot be mitigated or restored under the terms and conditions of a permit;
   b. there is the likelihood of unreasonable disruption or conflict with the public’s use and enjoyment of the site;
   c. there is the likelihood that the activity poses health or safety risks to the public;
   d. there is the likelihood that the activity would result in the impairment of park resources or values;
   e. the requested activity will violate any other applicable Federal, State, or local law or regulation.
5. **All commercial filming permits and still photography permits are subject to cost recovery and a location fee. No waivers are allowed.** The location fee is calculated per day and must be based on the following schedule and is determined by the type of activity (commercial filming versus still photography) and the number of people on park lands associated with the permitted activity. There is no deviation from the schedule.

<table>
<thead>
<tr>
<th>Commercial Filming/Videos</th>
<th>Still Photography</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 2 people, camera &amp; tripod only</td>
<td>$0/day</td>
</tr>
<tr>
<td>1 - 10 people</td>
<td>$150/day</td>
</tr>
<tr>
<td>11 - 30 people</td>
<td>$250/day</td>
</tr>
<tr>
<td>31 - 49 people</td>
<td>$500/day</td>
</tr>
<tr>
<td>Over 50 people</td>
<td>$750/day</td>
</tr>
<tr>
<td>1 - 10 people</td>
<td>$50/day</td>
</tr>
<tr>
<td>11 - 30 people</td>
<td>$150/day</td>
</tr>
<tr>
<td>Over 30 people</td>
<td>$250/day</td>
</tr>
</tbody>
</table>

6. **Location fees collected by parks should be deposited into PWE 625.** The 80% will be returned to park in PWE 629 and is available until expended. The new law authorizes use the location fee money “in accordance with the formula and purposes established for the Recreational Fee Demonstration Program (P.L. 104-134)...” Additional budget guidance will be published soon.

7. **Cost Recovery procedures also change.** Cost recovery amounts are still based on the actual cost incurred by the park in processing the request, monitoring the activity and rehabilitating or restoring the permitted area but under P.L. 106-206 the money collected is available until expended. Because the money is now no year money, **cost recovery for commercial filming and still photography activities should be deposited into PWE 627 not PWE 318.** Parks should also use PWE 627 to charge against cost recovery accounts. Additional budget guidance will be published soon.

8. The authority to collect cost recovery for all other special use permits remains 16 U.S.C. 3a. Money collected under this authority will continue to be deposited into PWE 318. **PWE 318 money remains year end money and must be expended by the end of each fiscal year.**

Questions should be directed...
Q. What is the legal authority to issue permits for commercial filming and still photography?
A. On May 26, 2000 Public Law 106-206 was enacted. The law applies to agencies in the Departments of the Interior and Agriculture and establishes criteria for issuing permits for commercial filming and certain still photography activities. The law is currently codified at 16 U.S.C. 460l-6d (that’s a lower case “L”)

Q. Is there a regulation governing commercial filming and still photography permitting in the NPS?
The regulations at 36 CFR 5.5 and 43 CFR part 5 have been superseded by Public Law 106-206. The NPS has issued internal guidance implementing the law while new regulations are being promulgated.

Q. When will the new regulations take effect?
A: The new regulation at 43 CFR part 5 will apply to the NPS, the Fish & Wildlife Service and the Bureau of Land Management. A draft regulation was published for public comment in the Federal Register on August 20, 2007. The agencies hope to finalize the regulation by mid-2013.

Q. Does the law require permits for commercial filming?
A: Public Law 106-206 and NPS guidance require that all commercial filming requires a permit. The draft regulation uses the following definition:

Commercial filming means the film, electronic, magnetic, digital, or other recording of a moving image by a person, business, or other entity for a market audience with the intent of generating income. Examples include, but are not limited to, feature film, videography, television broadcast, or documentary, or other similar projects. Commercial filming activities may include the advertisement of a product or service, or the use of actors, models, sets, or props.

Q. When does still photography require a permit?
A: Most still photography will not require a permit. Still photography activities require a permit only if:

- The still photography activity uses models, sets or props
- The still photography activity takes place in an area where or when members of the public are not allowed
- The agency would incur costs for providing on-site management and oversight to protect agency resources and minimize visitor use conflicts.

For the purposes of NPS guidance a portrait subject is not considered a model. Examples of portrait subjects include, but are not limited to, wedding parties, high school/college graduates. But photography involving portrait subjects may require a permit if it also includes the use of props or sets, or is conducted in an area closed to the public, or needs to
be managed by NPS personnel.

Q. Does commercial still photography require a permit?
A: Not unless it meets one of the conditions mentioned previously requiring a still photography permit. Public Law 106-206 bases the permit requirements for still photography on whether the activity will interfere with other park visitors and park activities or impact park resources; not whether the photographer is a professional.

Q. What fees and charges are authorized by Public Law 106-206?
A: Public Law 106-206 directs the agencies to collect a reasonable fee (location fee) to provide a fair return for the use of the land and cost recovery. These fees and charges may not be waived. The location fee is determined from a schedule based on type of activity, number of people and number of days in the park.

Q. What is the location fee used for?
A. 80% of the location fees collected is returned to the park to be spent according to the provisions of the original fee demonstration program. Guidance is found on Inside NPS.

Q. Does aerial commercial filming and still photography activities require a permit?
A. Aerial commercial filming and still photography activities would require a permit only if they landed in the park, or if they staged an activity in the park that was being filmed or photographed from the air. The Federal Aviation Administration (FAA) has sole authority to control airspace of the U.S. and the activity falls under their jurisdiction.

Q. Is the use of unmanned aerial aircraft (UAS) allowed within parks for commercial filming and still photography?
A. Most parks have denied permits to use UAS for aerial commercial filming and still photography activities due to the potential for unacceptable visual and noise impacts, possible resource damage, and concerns of the vehicle crashing in inaccessible areas.

UAS are subject to FAA regulation and currently are not authorized for use by private, commercial companies. The FAA is currently working on new regulations to cover the private use of UAS. If you have questions about the use a UAS in a park contact the WASO Special Park Uses Program manager, or the FAA Unmanned Aircraft Program office. The FAA web site has a FAQ page on UAS.
Hierarchy of Legal Authority

United States Constitution—"We the People of the United States . . ."
Federal government is one of "enumerated powers."

Commerce Clause (art. I, § 8, cl. 3)
Authorizes Congress to regulate "Commerce with foreign Nations, and among the several states, and with the Indian Tribes." Cited as an authority for the Civil Rights Act of 1964, which was upheld as constitutional in Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964), and Katzenbach v. McChesney, 379 U.S. 294 (1964) (Ollie's Barbecue in Birmingham).

Enclave Clause (art. I, § 8, cl. 17)
Authorizes Congress to exercise "exclusive Legislation" over areas "purchased by consent of the Legislatures of the States." Basis for determining underlying criminal and civil jurisdiction of park areas: exclusive federal (e.g., Big Bend National Park), concurrent federal/state (e.g., Grand Canyon National Park), or proprietor federal (e.g., San Antonio Missions National Historical Park)

Necessary and Proper Clause (art. I, § 8, cl. 18)

Property Clause (art. IV, § 3, cl. 2)
Kleppe v. New Mexico, 426 U.S. 529 (1976) (J. Thurgood Marshall)—State of New Mexico challenged constitutionality of Wild Free-Roaming Horses and Burros Act. In upholding the statute, a unanimous United States Supreme Court, observed, "And while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that '[t]he power over the public land thus entrusted to Congress is without limitations.'"

Supremacy Clause (art. VI, cl. 2)
Basis for federal preemption of state law, which may occur either by a conflict/inconsistency between federal and state law or by federal law "occupying the field" (e.g., federal Copyright Act)

Judicial review
Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) (J. John Marshall)—"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret the rule. If two laws conflict with each other, the courts must decide on the operation of each." Mention Justice Frankfurter's three rules of statutory construction ("Read the statute, . . .").
Treaties, statutes (as interpreted by courts)
Section 3 of the NPS “Organic Act,” codified as amended at 16 U.S.C. § 3 (2006), directs the Secretary of the Interior to “make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service.” 16 U.S.C. § 1a–2(h) authorizes the Secretary to “[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System.”

Presidential proclamations and executive orders
Section 2 of the Antiquities Act, codified at 16 U.S.C. § 431 (2006), authorizes the President to declare “by public proclamation” national monuments; the United States Supreme Court recognized Congressional acquiescence in other executive withdrawals in United States v. Midwest Oil Co., 236 U.S. 459 (1915).

Regulations, Secretarial orders
16 U.S.C. § 3 theoretically grants the NPS very broad authority to regulate the use and management of units of national park system. In practice, however, political considerations, funding, and other realities impose limitations on that authority.

Written policies and guidelines (e.g., Management Policies 2006, Director’s Orders, and Reference Manuals)
Important for proving, under the Administrative Procedure Act, that a particular agency action was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Revised 7/09 by:
§ 1a–2. Secretary of the Interior’s authorization of activities

In order to facilitate the administration of the national park system, the Secretary of the Interior is authorized, under such terms and conditions as he may deem advisable, to carry out the following activities:

(a) **Transportation**

Provide transportation of employees located at isolated areas of the national park system and to members of their families, where

(1) such areas are not adequately served by commercial transportation, and
(2) such transportation is incidental to official transportation services.

(b) **Recreation**

Provide recreation facilities, equipment, and services for use by employees and their families located at isolated areas of the national park system.

(c) **Advisory committees; compensation and travel expenses**

Appoint and establish such advisory committees in regard to the functions of the National Park Service as he may deem advisable, members of which shall receive no compensation for their services as such but who shall be allowed necessary travel expenses as authorized by section 5703 of title 5.

(d) **Park equipment purchases**

Purchase field and special purpose equipment required by employees for the performance of assigned functions which shall be regarded and listed as park equipment.

(e) **Services, resources, or water contracts**

Enter into contracts which provide for the sale or lease to persons, States, or their political subdivisions, of services, resources, or water available within an area of the national park system, as long as such activity does not jeopardize or unduly interfere with the primary natural or historic resource of the area involved, if such person, State, or its political subdivision—

(1) provides public accommodations or services within the immediate vicinity of an area of the national park system to persons visiting the area; and
(2) has demonstrated to the Secretary that there are no reasonable alternatives by which to acquire or perform the necessary services, resources, or water.

(f) **Vehicular air-conditioning**

Acquire, and have installed, air-conditioning units for any Government-owned passenger motor vehicles used by the National Park Service, where assigned duties necessitate long periods in automobiles or in regions of the United States where high temperatures and humidity are common and prolonged.

(g) **Exhibits and demonstrations; sale of products and services; contracts and cooperative arrangements; credits to appropriation**

Sell at fair market value without regard to the requirements of the Federal Property and Administrative Services Act of 1949, as amended, products and services produced in the conduct of living exhibits and interpretive demonstrations in areas of the national park system, to enter into contracts including cooperative arrangements with respect to such living exhibits and interpretive demonstrations, and to credit the proceeds therefrom to the appropriation bearing the cost of such exhibits and demonstrations. Sixty percent of the fees paid by permittees for the privilege of entering into Glacier Bay for the period
beginning on the first full fiscal year following November 12, 1996, shall be deposited into a special account and that such funds shall be available—

(1) to the extent determined necessary, to acquire and preposition necessary and adequate emergency response equipment to prevent harm or the threat of harm to aquatic park resources from permittees; and

(2) to conduct investigations to quantify any effect of permittees’ activity on wildlife and other natural resource values of Glacier Bay National Park. The investigations provided for in this subsection shall be designed to provide information of value to the Secretary, in determining any appropriate limitations on permittees’ activity in Glacier Bay. The Secretary may not impose any additional permittee operating conditions in the areas of air, water, and oil pollution beyond those determined and enforced by other appropriate agencies. When competitively awarding permits to enter Glacier Bay, the Secretary may take into account the relative impact particular permittees will have on park values and resources, provided that no operating conditions or limitations relating to noise abatement shall be imposed unless the Secretary determines, based on the weight of the evidence from all available studies including verifiable scientific information from the investigations provided for in this subsection, that such limitations or conditions are necessary to protect park values and resources. Fees paid by certain permittees for the privilege of entering into Glacier Bay shall not exceed $5 per passenger. For the purposes of this subsection, “certain permittee” shall mean a permittee which provides overnight accommodations for at least 500 passengers for an itinerary of at least 3 nights, and “permittee” shall mean a concessionaire providing visitor services within Glacier Bay. Nothing in this subsection authorizes the Secretary to require additional categories of permits in, or otherwise increase the number of permits to enter Glacier Bay National Park.

(h) Regulations; promulgation and enforcement

Promulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States: Provided, That any regulations adopted pursuant to this subsection shall be complementary to, and not in derogation of, the authority of the United States Coast Guard to regulate the use of waters subject to the jurisdiction of the United States.

(i) United States Park Police and other National Park Service employees; meals and lodging

Provide meals and lodging, as the Secretary deems appropriate, for members of the United States Park Police and other employees of the National Park Service, as he may designate, serving temporarily on extended special duty in areas of the National Park System, and for this purpose he is authorized to use funds appropriated for the expenses of the Department of the Interior.

(j) Cooperative research and training programs

Enter into cooperative agreements with public or private educational institutions, States, and their political subdivisions, for the purpose of developing adequate, coordinated, cooperative research and training programs concerning the resources of the National Park System, and, pursuant to any such agreements, to accept from and make available to the cooperators technical and support staff, financial assistance for mutually agreed upon research projects, supplies and equipment, facilities, and administrative services relating to cooperative research units as the Secretary deems appropriate; except that this paragraph shall not waive any requirements for research projects that are subject to the Federal procurement regulations.

(k) Leases

(1) In general

Except as provided in paragraph (2) and subject to paragraph (3), the Secretary may enter into a lease with any person or governmental entity for the use of buildings and associated property administered by the Secretary as part of the National Park System.
(2) Prohibited activities

The Secretary may not use a lease under paragraph (1) to authorize the lessee to engage in activities that are subject to authorization by the Secretary through a concessions contract, commercial use authorization, or similar instrument.

(3) Use

Buildings and associated property leased under paragraph (1)—

(A) shall be used for an activity that is consistent with the purposes established by law for the unit in which the building is located;

(B) shall not result in degradation of the purposes and values of the unit; and

(C) shall be compatible with National Park Service programs.

(4) Rental amounts

(A) In general

With respect to a lease under paragraph (1)—

(i) payment of fair market value rental shall be required; and

(ii) section 1302 of title 40 shall not apply.

(B) Adjustment

The Secretary may adjust the rental amount as appropriate to take into account any amounts to be expended by the lessee for preservation, maintenance, restoration, improvement, or repair and related expenses.

(C) Regulation

The Secretary shall promulgate regulations implementing this subsection that includes provisions to encourage and facilitate competition in the leasing process and provide for timely and adequate public comment.

(5) Special account

(A) Deposits

Rental payments under a lease under paragraph (1) shall be deposited in a special account in the Treasury of the United States.

(B) Availability

Amounts in the special account shall be available until expended, without further appropriation, for infrastructure needs at units of the National Park System, including—

(i) facility refurbishment;

(ii) repair and replacement;

(iii) infrastructure projects associated with park resource protection; and

(iv) direct maintenance of the leased buildings and associated properties.

(C) Accountability and results

The Secretary shall develop procedures for the use of the special account that ensure accountability and demonstrated results consistent with this Act.

(1) Cooperative management agreements

(1) In general

Where a unit of the National Park System is located adjacent to or near a State or local park area, and cooperative management between the National Park Service and a State or local government agency of a portion of either park will allow for more effective and efficient management of the parks, the Secretary may enter into an agreement with a State or local government agency to provide for the cooperative management of the Federal and State or local park areas. The Secretary may
not transfer administration responsibilities for any unit of the National Park System under this paragraph.

(2) **Provision of goods and services**

Under a cooperative management agreement, the Secretary may acquire from and provide to a State or local government agency goods and services to be used by the Secretary and the State or local governmental agency in the cooperative management of land.

(3) **Assignment**

An assignment arranged by the Secretary under section 3372 of title 5 of a Federal, State, or local employee for work in any Federal, State, or local land or an extension of such an assignment may be for any period of time determined by the Secretary and the State or local agency to be mutually beneficial.


**References in Text**


**Codification**

In subsec. (c), “section 5703 of title 5” substituted for “section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 5703)” on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.


**Amendments**

2000—Subsecs. (a) to (f). Pub. L. 106–176, § 118(2), (3), capitalized the first letter of the first word and substituted a period for the semicolon at end.

Subsec. (g). Pub. L. 106–176, § 118(1), (2), in introductory provisions, capitalized the first letter of the first word and substituted a period for the semicolon after “such exhibits and demonstrations”.

Subsec. (h). Pub. L. 106–176, § 118(2), (3), capitalized the first letter of the first word and substituted a period for “; and” at end.

Subsec. (i). Pub. L. 106–176, § 118(2), (4), capitalized the first letter of the first word and substituted a period for “; and” at end.


1996—Subsec. (g). Pub. L. 104–333, § 703, inserted provisions relating to Glacier Bay and substituted “interpretive demonstrations” for “interpretive demonstrations and park programs”.

- 4 -
1976—Subsec. (e). Pub. L. 94–458, § 1(1), inserted provision requiring Secretary to consider impact on primary natural and historic resources of an area before entering into contracts.
Subsecs. (h), (i). Pub. L. 94–458, § 1(2), added subsecs. (h) and (i).

Transfer of Functions
For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Termination of Advisory Committees
Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.
SEC. 418. COMMERCIAL USE AUTHORIZATIONS.

(a) IN GENERAL.—To the extent specified in this section, the Secretary, upon request, may authorize a private person, corporation, or other entity to provide services to visitors to units of the National Park System through a commercial use authorization. Such authorizations shall not be considered as concessions contracts pursuant to this title nor shall other sections of this title be applicable to such authorizations except where expressly so stated.

(b) CRITERIA FOR ISSUANCE OF AUTHORIZATIONS.—

(1) REQUIRED DETERMINATIONS.—The authority of this section may be used only to authorize provision of services that the Secretary determines will have minimal impact on resources and values of the unit of the National Park System and are consistent with the purpose for which the unit was established and with all applicable management plans and park policies and regulations.

(2) ELEMENTS OF AUTHORIZATION.—The Secretary shall—

(A) require payment of a reasonable fee for issuance of an authorization under this section, such fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administrative costs;

(B) require that the provision of services under such an authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values;

(C) take appropriate steps to limit the liability of the United States arising from the provision of services under such an authorization; and

(D) have no authority under this section to issue more authorizations than are consistent with the preservation and proper management of park resources and values, and shall establish such other conditions for issuance of such an authorization as the Secretary determines appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and proper management of the resources and values of the park.

(c) LIMITATIONS.—Any authorization issued under this section shall be limited to—
(1) commercial operations with annual gross receipts of not more than $25,000 resulting from services originating and provided solely within a unit of the National Park System pursuant to such authorization;

(2) the incidental use of resources of the unit by commercial operations which provide services originating and terminating outside of the boundaries of the unit; or

(3) such uses by organized children’s camps, outdoor clubs and nonprofit institutions (including back country use) and such other uses as the Secretary determines appropriate. Nonprofit institutions are not required to obtain commercial use authorizations unless taxable income is derived by the institution from the authorized use.

(d) PROHIBITION ON CONSTRUCTION. — An authorization issued under this section shall not provide for the construction of any structure, fixture, or improvement on federally-owned lands within the boundaries of a unit of the National Park System.

(e) DURATION. — The term of any authorization issued under this section shall not exceed 2 years. No preferential right of renewal or similar provisions for renewal shall be granted by the Secretary.

(f) OTHER CONTRACTS. — A person, corporation, or other entity seeking or obtaining an authorization pursuant to this section shall not be precluded from also submitting proposals for concessions contracts.
§ 731.106 Designation of public trust positions and investigative requirements.

(a) Risk designation. Agency heads must designate every covered position within the agency at a high, moderate, or low risk level as determined by the position's potential for adverse impact to the efficiency or integrity of the service. OPM will provide an example of a risk designation system for agency use in an OPM issuance as described in § 731.102(c).

(b) Public Trust positions. Positions at the high or moderate risk levels would normally be designated as “Public Trust” positions. Such positions may involve policy making, major program responsibility, public safety and health, law enforcement duties, fiduciary responsibilities or other duties demanding a significant degree of public trust, and positions involving access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain.

(c) Investigative requirements.

(1) Persons receiving an appointment made subject to investigation under this part must undergo a background investigation. OPM is authorized to establish minimum investigative requirements correlating to risk levels. Investigations should be initiated before appointment but no later than 14 calendar days after placement in the position.

(2) All positions subject to investigation under this part must also receive a sensitivity designation of Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive, when appropriate. This designation is complementary to the risk designation, and may have an effect on the position's investigative requirement. Sections 732.201 and 732.202 of this chapter detail the various sensitivity levels and investigative requirements. Procedures for determining investigative requirements for all positions based upon risk and sensitivity will be published in OPM issuances, as described in §§ 731.102(c) and 732.201(b).

(3) If suitability issues develop prior to the required investigation, OPM or the agency may conduct an investigation sufficient to resolve the issues and support a suitability determination or action, if warranted. If the person is appointed, the minimum level of investigation must be conducted as required by paragraph (c)(1) of this section.

(d) Reinvestigation requirements.

(1) Agencies must ensure that reinvestigations are conducted and a determination made regarding continued employment of persons occupying public trust positions at least once every 5 years. The nature of these reinvestigations and any additional
requirements and parameters will be established in supplemental guidance issued by OPM.

(2) If, prior to the next required reinvestigation, a separate investigation is conducted to determine a person's eligibility (or continued eligibility) for access to classified information or to hold a sensitive position, or as a result of a change in risk level as provided in paragraph (e) of this section, and that investigation meets or exceeds the requirements for a public trust reinvestigation, a new public trust reinvestigation is not required. Such a completed investigation restarts the cycle for a public trust reinvestigation for that person.

(3) Agencies must notify all employees covered by this section of the reinvestigation requirements under this paragraph.

(e) Risk level changes. If an employee or appointee experiences a change to a higher position risk level due to promotion, demotion, or reassignment, or the risk level of the employee's or appointee's position is changed to a higher level, the employee or appointee may remain in or encumber the position. Any upgrade in the investigation required for the new risk level should be initiated within 14 calendar days after the promotion, demotion, reassignment or new designation of risk level is final.

(f) Completed investigations. Any suitability investigation (or reinvestigation) completed by an agency under paragraphs (d) and (e) of this section must result in a determination by the employing agency of whether the findings of the investigation would justify an action under this part or under another applicable authority, such as part 315, 359, or 752 of this chapter. Section 731.103 addresses whether an agency may take an action under this part, and whether the matter must be referred to OPM for debarment consideration.

[73 FR 20154, Apr. 15, 2008, as amended at 73 FR 66492, Nov. 11, 2008; 76 FR 69608, Nov. 9, 2011]

This is a list of United States Code sections, Statutes at Large, Public Laws, and Presidential Documents, which provide rulemaking authority for this CFR Part.

This list is taken from the Parallel Table of Authorities and Rules provided by GPO [Government Printing Office].

It is not guaranteed to be accurate or up-to-date, though we do refresh the database weekly. More limitations on accuracy are described at the GPO site.

HideUnited States Code

HideU.S. Code: Title 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES
§ 1302 - Regulations
§ 3301 - Civil service; generally
§ 7301 - Presidential regulations

HidePresidential Documents
Executive Order ... 10577
Executive Order ... 11491
Executive Order ... 13448
Executive Order ... 13467
SUITABILITY

The Office of Personnel Management (OPM) has provided the following information to give a broad overview of the Federal employment suitability program and processes to our industry partners. It is excerpted from current guidance distributed by OPM to Executive Agencies. Although not mandated by formal policy, agencies often apply similar requirements for suitability to contractors who have staff-like access.*

The civil service requires high standards of integrity and trust to promote the interests of the public. OPM established a suitability program in the Federal competitive service to reduce the potential for abuse of the public trust, to ensure government-wide uniformity and fairness for applicants, appointees, and employees, and to determine suitability for employment. The requirements of this program apply to applicants for employment and to individuals already employed.

Suitability refers to identifiable character traits and conduct sufficient to decide whether an individual is likely or not likely to be able to carry out the duties of a Federal job with appropriate integrity, efficiency, and effectiveness. Suitability is distinguishable from a person’s ability to fulfill the qualification requirements of a job, as measured by experience, education, knowledge, and skills. Suitability actions include the following:

- Cancellation of eligibilities
- Debarment
- Removal

A non-selection for a specific position is not a suitability action unless one or more of the above actions is taken.

Appointments Subject to Investigation

As required in 5 CFR 731, persons appointed in the competitive service must undergo an investigation by OPM or by an agency conducting investigations under delegated authority from OPM. Except when required because of risk level changes, a person in the competitive service who has undergone a suitability investigation need not undergo another investigation simply because the person has been:

- Promoted;
- Demoted;
- Reassigned;
- Converted from career-conditional to career tenure;
- Appointed (or converted to an appointment) when that employee has been serving with that agency for at least one year in one or more positions under an appointment subject to investigation; or,
- Transferred, provided the individual has served continuously for at least one year in a position subject to investigation.
Reemployment

Reemployment is not one of the general exceptions listed above. When individuals are reemployed in Federal service, they should complete a new Declaration for Federal Employment (OF 306). They should also complete new investigative questionnaires (or update their prior form if the public trust or sensitivity level of their new position is the same as their previous one). If suitability issues are admitted on the OF 306 or investigative questionnaire, or if they are otherwise developed, they should be investigated and adjudicated.

If there are no suitability issues, and there has not been a break in service of longer than 24 months, a new investigation is not necessary unless it is required under 5 CFR 732, or other authority, or because of a higher public trust risk level. The adjudicative guidelines established by 5 CFR 731 will be used for all reemployments that are subject to investigation and adjudication.

Adjudicative Standards

The objective in adjudicating national security is to establish a reasonable expectation that employment or continued employment of the person would or would not be clearly consistent with the interests of national security. This security determination is an individual agency responsibility that is made in addition to the suitability determination and is separate and distinct from the suitability determination.

A major difference between suitability adjudication and security adjudication is that suitability adjudication considers only an individual’s personal conduct while security concerns may go beyond the individual’s conduct to that of (for example) their associates or relatives, or the influence of foreign contacts. (5 CFR 732, EO 10450, EO 12968, and related authorities provide more detailed guidance on adjudicating for national security.)

Many security issues may also be disqualifying under suitability. OPM recommends that each case be adjudicated under suitability criteria prior to adjudication under security criteria. An adverse suitability determination may result in a decision that a period of debarment for up to three years from all positions in the competitive Federal service is warranted. An agency may deny a security clearance based in part on the presence of a previous negative determination, but there is no administrative procedure mandating automatic government-wide debarment for security clearance determinations.

Public Trust

Designation of Public Trust Positions Agencies are responsible for designating each competitive service position within the agency based on the documented duties and responsibilities of the position. Each position will be designated at the High, Moderate, or Low risk level depending on the position’s potential for adverse impact to the integrity and efficiency of the service (5 CFR 731.106). Positions at the High and Moderate risk levels are referred to as “Public Trust” positions. These positions generally involve the
following duties or responsibilities:
- Policy making
- Major program responsibility
- Public safety and health
- Law enforcement duties
- Fiduciary responsibilities
- Other activities demanding a significant degree of public trust.

Public Trust positions also involve access to, operation or control of proprietary systems of information, such as financial or personal records, with a significant risk for causing damage to people, programs or an agency, or for realizing personal gain.

**Risk Levels.** The three suitability position risk levels are defined and explained in the table below.

<table>
<thead>
<tr>
<th>RISK LEVELS</th>
<th>DEFINITIONS AND REPRESENTATIVE DUTIES OR RESPONSIBILITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>HIGH (HR)</td>
<td>Positions with the potential for exceptionally serious impact on the integrity and efficiency of the service.</td>
</tr>
<tr>
<td>Public Trust Position</td>
<td>Duties involved are especially critical to the agency or program mission with a broad scope of responsibility and authority. Positions include:</td>
</tr>
<tr>
<td></td>
<td>- Policy-making, policy-determining, and policy-implementing;</td>
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<td></td>
<td>- Higher level management duties or assignments, or major program responsibility;</td>
</tr>
<tr>
<td></td>
<td>- Independent spokespersons or non-management position with authority for independent action;</td>
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<td></td>
<td>- Investigative, law enforcement, and any position that requires carrying a firearm; and</td>
</tr>
<tr>
<td></td>
<td>- Fiduciary, public contact, or other duties demanding the highest degree of public trust.</td>
</tr>
<tr>
<td>MODERATE (MR)</td>
<td>Positions with the potential for moderate to serious impact on the integrity and efficiency of the service.</td>
</tr>
<tr>
<td>Public Trust Position</td>
<td>Duties involved are considerably important to the agency or program mission with significant program responsibility or delivery of service. Positions include:</td>
</tr>
<tr>
<td></td>
<td>- Assistants to policy development and implementation;</td>
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<tr>
<td></td>
<td>- Mid-level management duties or assignments;</td>
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<tr>
<td></td>
<td>- Any position with responsibility for independent or semi-independent action; and</td>
</tr>
<tr>
<td></td>
<td>- Delivery of service positions that demand public confidence or trust.</td>
</tr>
<tr>
<td>LOW (LR)</td>
<td>Positions that involve duties and responsibilities of limited relation to an agency or program mission, with the potential for limited impact on the integrity and efficiency of the service.</td>
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</tbody>
</table>

**Investigative Requirements** Pursuant to the authority delegated by the President of the United States under 5 U.S.C. sections 1104 and 3301, and Executive Order 10577, OPM requires individuals seeking admission to the civil service to undergo investigation to establish their suitability for employment. OPM has determined that varying levels of investigation are appropriate, depending on the responsibilities of the position. The minimum level of investigation required for entry into the Federal service is the National Agency Check with Inquiries (NACI). OPM recommends that individuals in contract and excepted service positions also be investigated appropriately in order to ensure they are suitable to carry out their duties and responsibilities in a manner that will protect the integrity and promote the efficiency of the service. The same method of determining which level of investigation to conduct on competitive service positions (i.e., Risk
Designation System) should be used for contractors or excepted service positions.

The type of investigation to conduct is a product of the risk level designation of a position and, if appropriate, National Security requirements. OPM has established the following minimum levels of required investigation for positions at the Low, Moderate, and High risk levels:

<table>
<thead>
<tr>
<th>RISK LEVEL</th>
<th>MINIMUM REQUIRED INVESTIGATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOW Risk</td>
<td>NACI – National Agency Check and Inquiries</td>
</tr>
<tr>
<td>MODERATE Risk</td>
<td>MBI – Minimum Background Investigation</td>
</tr>
<tr>
<td>HIGH Risk</td>
<td>BI – Background Investigation</td>
</tr>
</tbody>
</table>

An MBI is essentially an NACI plus a Subject Interview. A BI is essentially an MBI plus 5 years of personal coverage of a person’s employment, residential and educational history.

In some cases, OPM recommends a more comprehensive investigation to take into account unique factors specific to the duties and responsibilities of a position, the organizational need for uniformity of operations, or National Security considerations.

Relationship of Suitability Risk and National Security Sensitivity to Investigation Type

Basic suitability screening is required for all positions. The first determination an agency must make is whether the person has the character traits and past conduct expected of someone who is to carry out the duties and responsibilities of a Federal job in order to protect the integrity and promote the efficiency of the service.

Once a suitability determination is made, if appropriate, the person then can be screened based on National Security considerations, including considerations for access to classified information and sensitive, restricted facilities (as outlined in 5 CFR 732). Because Public Trust duties and responsibilities may outweigh National Security considerations at the lower access levels (Secret and Confidential), agencies must consider both suitability and security aspects of a position in determining the appropriate type of investigation to conduct.

For example, if a position is designated High Risk under suitability, but the incumbent of that position needs a Secret clearance; a Background Investigation (BI) is required. A BI is the minimum investigation required for a position designated High Risk. So although an Access National Agency Check with written inquiries (ANACI) is the appropriate level of investigation for the Secret clearance, it would not be appropriate in this instance because a BI is required for the High Risk under suitability. Of the two investigation types, ANACI and BI, the BI provides the higher level of screening required for the High Risk position. The BI also meets the investigative requirement
for Secret access. The ANACI does not meet the screening requirements for a High Risk position.

**Timing of Investigations**  Investigations should be initiated before appointment or, at most, within 14 calendar days of placement in the position. If, at any time, it is determined that a required investigation has never been conducted for the initial subject to investigation appointment, the appropriate required investigation must be conducted even if there have been subsequent personnel actions that would not be subject to investigation (such as transfers, promotions, or reassignments).

**Change in Position Risk Level**  All employees moving to a new position at a higher risk level than the risk level of the position they left must meet the investigative requirements of the risk level designation of the new position. Any required higher level investigation must be initiated within 14 working days of the date the new position is occupied. If the risk level of an incumbent’s position is increased due to a change in duties and responsibilities, the incumbent may remain in the position, but the investigation required by the higher risk level should be initiated within 14 working days of the effective date of the new position designation. This guidance applies to details as well as permanent reassignments.

*If there are new potentially disqualifying suitability issues after such an investigation, the authority the agency uses to adjudicate will depend on the subject’s employment status: 5 CFR 315, to terminate a temporary appointment; 5 CFR 752, if an adverse action under that authority is warranted; etc.*

**Exceptions to Investigative Requirements**  Exceptions to the investigative requirements are made in the following positions at the Low risk level: intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments. *The agency must still conduct sufficient checks to ensure that the employment or retention of the individual is clearly consistent with the integrity and efficiency of the service (5 CFR 732.202).*

**Questionnaires for Suitability Investigations**  Use the Standard Form 85 (SF 85) *Questionnaire for Non-Sensitive Positions* for all positions designated Low Risk. For positions designated Moderate or High Risk, use the Standard Form 85P (SF 85P) *Questionnaire for Public Trust Positions*. The Standard Form 86 (SF 86) *Questionnaire for National Security Positions* is to be used for positions involving the National Security with sensitivity level designations. Permission to use the SF 86 for positions with other than sensitivity level designations (i.e., public trust positions) must be obtained from OPM prior to using the form to initiate investigations. The Standard Form 85P-S (SF 85PS) *Supplemental Questionnaire for Selected Positions* contains additional questions and is used only when an agency requests, and is granted, OPM approval to use it (by Special Agreement with OPM).

If a new investigation is needed because of a risk or sensitivity level change, the person should complete a new investigative form. A previously completed investigative form may be updated for this purpose only when the same form is required for the new investigation (and the form has not been revised or replaced with
a newer version).

**Suitability Reinvestigations** Although OPM has no authority to require agencies to conduct reinvestigations in suitability cases, we recommend reinvestigations for certain Moderate and High Risk public trust positions. Lacking a requirement to request reinvestigations, agencies must ensure they have appropriate authority, such as the Computer Security Act of 1987, OMB Circular No. A-130, agency-specific regulations, or written policy. When the authority exists, OPM recommends a minimum of a Periodic Reinvestigation (PRI) for High Risk positions, a National Agency Check with Credit (NACC) investigation for Moderate Risk positions.

Agencies may request variations in the type of reinvestigations from OPM and may make their requirements appropriate to specific positions. For example, for a position with access to money where there is a potential for theft, such as an Imprest Fund Manager or Bank Examiner, the appropriate reinvestigation could be a credit search, Subject interview, and residence coverage.

*The implementation of Homeland Security Presidential Directive 12 (HSPD-12) has extended the basic investigative requirement to uncleared contractors. These persons must, under HSPD-12, receive at least a NACI level investigation. Therefore, agency discretion with regard to the investigation of this population has been greatly reduced. Official guidance with regard to HSPD-12 implementation is available from OMB.*
These laws apply to all Federal employees and each carry criminal penalties for noncompliance. They also serve as a basis for the ethics regulations known as the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635.

**Bribery Of Public Officials Prohibited - 18 U.S.C. § 201**

This statute prohibits a Government employee from directly or indirectly receiving or soliciting anything of value in exchange for being influenced in the performance or nonperformance of any official act, including giving testimony, or in exchange for committing fraud.

**Restrictions on Compensated Representational Activities - 18 U.S.C. § 203**

This statute prohibits a Government employee from seeking or accepting compensation for representational services (rendered either personally or by another) before a Federal court or Government agency in a particular matter in which the United States is a party or has a direct or substantial interest. Representational services include any communications on behalf of another party with the intent to influence the Government. There are limited exceptions, such as for representing oneself or one's immediate family or a person or estate for which the employee acts as a fiduciary, but not where the employee has participated officially or has official responsibility.

**Restrictions on Acting as an Agent or Attorney - 18 U.S.C. § 205**

This statute prohibits a Government employee from acting as an agent or attorney for anyone before a Federal court or Government agency, whether compensated or not. There are limited exceptions, such as for representing other Federal employees in personnel matters; representing a not-for-profit organization in certain matters, if a majority of its members are current Federal employees or their spouses or dependent children; representing oneself or one's immediate family or a person or estate for which the employee acts as a fiduciary, but not where the employee has participated officially or has official responsibility; or acting as an agent or attorney, in certain matters, for a tribal organization or intertribal consortium to which the employee is assigned under the Intergovernmental Personnel Act or 25 U.S.C. § 48, after advising the Government in writing of any personal and substantial involvement the employee has had in connection with the matter.

**Post-Government Employment Restriction - 18 U.S.C. § 207**

This statute does not bar an individual, regardless of rank or position, from accepting employment with any private or public employer. It does impose restrictions on certain communications that a former employee may make as a representative of a third party back to the Federal Government. These restrictions are explained more fully in the "Restrictions on Post-Government Employment" section of this website.

**Conflicts of Interest - 18 U.S.C. § 208**

This statute prohibits a Government employee from participating personally and substantially, on behalf of the Federal Government, in any particular matter in which he or she has a financial interest. In addition, the statute provides that the financial interests of certain other "persons" are imputed to the employee (that is, the interests are the same as if they were the employee's interests). These other persons include the employee's spouse, minor child, general partner, an organization in which he or she serves as an officer, trustee, partner or employee, and any person or organization with whom the employee is negotiating or has an arrangement concerning future employment. There are limited regulatory exemptions authorized by the Office of Government Ethics, an exception for certain financial interests arising solely out of Native American birthrights, and a very limited waiver authority. Conflicts of Interest (FAQ)


This statute prohibits a Government employee from receiving any salary, or any contribution to or supplementation of salary; or anything of value from a non-federal entity as compensation for services he or she is expected to perform as a Government employee.
Impartiality in Performing Official Duties - 5 C.F.R. § 2635.502

You must take appropriate steps to avoid any appearance of loss of impartiality in the performance of your official duties. Beyond the conflict of interest law discussed at 18 U.S.C. § 207, ethics regulations require all employees to recuse themselves from participating in an official matter if their impartiality would be questioned. The regulations identify three circumstances where employees should carefully consider whether their impartiality is subject to question: 1) where the financial interests of a member of the employee's household would be impacted; 2) if a party or party representative in an official matter has a "covered relationship" with the employee; and 3) any other time the employee believes his or her impartiality may be subject to question. The term "covered relationship" includes a wide variety of personal and business relationships that an employee or his family members may have with outside parties. Employees who find that a party or representative of a party is a person with whom the employee or a family member has a personal or outside-of-work/unofficial business relationship should consult with their ethics counselor before taking official action in a particular matter. Impartiality in Performing Official Duties (FAQ)

All DOI Employees - 5 C.F.R. § 3501.103(c)

This regulation prohibits, with limited exceptions, all DOI employees, their spouses, and their minor children from acquiring or retaining any claim, permit, leases, small tract entries, or other rights that are granted by the Department in Federal lands. This prohibition does not restrict the recreational or other personal or noncommercial use of Federal lands by an employee, or the employee's spouse or minor children, on the same terms available to the general public.
Faculty Biographies
Erica F. Buckley serves as Bureau Chief of the Real Estate Finance Bureau at the NYS Office of the Attorney General. The Bureau enforces Article 23-A of the General Business Law and governing regulations involving the offer and sale of real estate securities in and from New York, including cooperative interests in realty, syndications, and intrastate offerings. Prior to her appointment as Bureau Chief, Ms. Buckley also held the position of Review Section Chief and Assistant Attorney General in the Real Estate Finance Bureau. Before joining the AG's Office, Ms. Buckley was the founder of the legal department for the Urban Homesteading Assistance Board, a not-for-profit specializing in limited-equity housing cooperatives. Prior to founding UHAB’s legal department, Ms. Buckley served as a building project manager where she was charged with managing a 250-unit portfolio of distressed multi-family buildings in New York City. Ms. Buckley focuses much of her work on areas of the law involving affordable housing and homeownership. Ms. Buckley served as the Chair of the New York City Bar's Housing and Urban Development Committee for three years and is currently a member of the City Bar’s Committee on Cooperative and Condominium Law.

Erica F. Buckley
Erica.Buckley@ag.ny.gov
Richard Diorio is a JD Candidate at Benjamin N. Cardozo School of Law (Class of 2017). He is a Staff Editor on the Cardozo Journal of Conflict Resolution and was legal intern at the Bronx County Supreme Court. He completed his undergraduate work at City University of New York, Baruch College focusing on Philosophy, IT, Chemistry, Japanese and Chinese Languages.
Katherine J. Hwang joined the New York State Attorney General’s Office as an Assistant Attorney General in the Real Estate Finance Bureau in 2012. She regulates the real estate securities industry through the review of real estate securities offerings for compliance with New York State securities laws and regulations, negotiating and entering into assurances of discontinuances, conducting investigations on fraudulent actions, and drafting public memoranda and guidance documents. Her successes include a felony criminal convictions and $4.8M judgment against notorious Queens developers (*People of the State of New York v. Thomas Huang, et al.*), and the permanent injunction against Queens developers (*People v. Metroplex on the Atlantic, et al.*).

Prior to the Attorney General’s Office, she served as a Law Clerk to Judge Sheila A. Venable and worked in private practice at the law firm of Santamarina and Associates. She also served as a consultant to the Open Society Justice Initiative and as staff attorney to the Benjamin N. Cardozo Human Rights and Genocide Clinic.

She was the Freedom of Expression Subcommittee Chairperson of the African Affairs Committee of the New York City Bar Association for three years. She is currently the Co-Chair of the New York County Lawyers’ Association Young Lawyers’ Section. She co-founded the Peer-to-Peer Resume Review Service of the New York County Lawyers’ Association to assist law students, law graduates, and attorneys in transition.

Katherine is a 2009 graduate of the Benjamin N. Cardozo School of Law and a 2004 graduate of the University of California, Berkeley.
Diana Leyden, Taxpayer Advocate
Diana joined the Department of Finance as the new Taxpayer Advocate in July, 2015. After graduating from UConn Law School, she served as a Law Clerk to the Hon. Herbert Chabot, U.S. Tax Court. From there, she practiced corporate and tax exempt tax law with Steptoe & Johnson (Washington, DC), Powers & Hall (Boston, MA) and Day Pitney (Boston, MA.) In 1988, she was took a position as an appeals officer and then an Appeals Bureau manager in the Massachusetts Department of Revenue. After that, she worked as a staff attorney in the Connecticut Department of Revenue Services handling business taxes and sales taxes.

In 1999, she left the Connecticut Department of Revenue Services to write a grant for a Low Income Taxpayer Clinic at UConn Law School, her alma mater. She created that clinic and ran it for 16 years, before leaving to join the NYC Department of Finance.

In 2005, she was awarded the ABA Tax Section Janet Spragens Pro Bono Award for her work on behalf of low income taxpayers.

She is a magna cum laude graduate of Union College and holds a Masters in Tax Law (LLM) from Georgetown University Law Center.
Frank was appointed as a 2014 Presidential Management Fellow and serves as the Special Park and Land Use Specialist at Gateway National Recreation Area (Gateway). And yes, he knows “special” appears twice in his title. He is under the delusion that “special” appears twice because he is extra-special.

Gateway is a complex urban park embracing an area of over 26,000 acres. It extends from Sandy Hook, New Jersey, along the south side of Staten Island, to Jamaica Bay, the Rockaways and Breezy Point in New York City. Assembled from city parks, military sites, and undeveloped land, Gateway weaves together history, nature, and recreation areas to create an extraordinary experience for visitors.

Frank and his colleagues from the Office of Business Services are responsible for managing real property throughout the park for commercial, public, and nonprofit use. Among the projects to which Frank has contributed include:

- Creating a competitive bidding process for food truck service for the beach centers at Sandy Hook, New Jersey;
- Answering a request to scatter human remains at Jacob Riis Beach in the Rockaways;
- Drafting a permit for a bird watching society to conduct a shorebird festival at the Jamaica Bay Wildlife Refuge;
- Drafting a cease-and-desist letter to a private landowner encroaching on park land; and
- Drafting a Right-of-Way permit for a military branch to install a telecommunications system within the park’s boundaries.

Frank is admitted to practice in the State of New York. He graduated from the University of Connecticut School of Law (UConn Law) with a Certificate in Tax Studies. While in law school, he was selected for the ABA Section of Business Diversity Clerkship Program, clerking for the Honorable Christine A. Ward, Court of Common Pleas of Allegheny County, Commerce and Complex Litigation, in Pittsburgh. Frank has also externed for the Taxpayer Advocate Service, IRS, in Washington, D.C., and for the Honorable Henry S. Cohn, Superior Court, Tax and Administrative Appeals, in New Britain, Connecticut.

Frank was a substantial participant in writing: Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions, in National Taxpayer Advocate 2012 Annual Report to Congress, vol. 1, 544-52.

Franks also holds an M.B.A. from the Marshall School of Business, University of Southern California (USC). He will not bore you with the details of his previous career.

A native of Queens, Frank is a die-hard Mets fan. He graduated from Queens College, City University of New York, with a B.A. in Communication Arts and Sciences.
Milton Yu joined the New York City Department of Investigation (DOI) in the fall of 2014 as the Inspector General overseeing the New York City Human Resources Administration (HRA). HRA is the third largest New York City agency behind the New York City Police Department and the Department of Education, and it is the largest social services agency in the United States. HRA employs over 14,000 individuals and has an annual operating budget of $9.7 billion. HRA provides eligible New York City residents with temporary cash assistance, nutritional assistance, and administers the Medicaid program. Pursuant to Chapter 34 of the New York City Charter and Executive Order 105, Inspectors General are tasked with implementing anti-corruption measures and policy recommendations to mitigate fraud, corruption, and operational inefficiencies in the agencies they oversee. The Office of the Inspector General also handles criminal investigations arising from the misconduct of City employees. As the Inspector General for HRA, Milton manages a team comprising of Deputy Inspectors General, Assistant Inspectors General, and investigators.

Prior to joining DOI, Milton was an Assistant Attorney General in the Office of the New York State Attorney General where he prosecuted white-collar fraud cases. Prior to that Milton was an Assistant District Attorney in the Office of the Queens County District Attorney where he handled long-term investigations and prosecutions of narcotics trafficking cases. Before entering law school, Milton was a consultant at Accenture, PricewaterhouseCoopers, and Answerthink, Inc. Milton is a graduate of the Benjamin N. Cardozo School of Law and the University of California, Berkeley.