

Appendix II: Ethics Guardrails for Talent Exchanges

Below is a review of the ethics guardrails applicable to each exchange program discussed in this paper, including statutes, regulations and an executive order.¹⁹ The guardrails highlighted are specified by the programs' authorizing statute or program guidelines.

Applicable Statutes, Regulations and Executive Order Specified in Program Documents	Exchange Programs' Ethics Guardrails							
	Government-wide		Department of Defense		Department of Homeland Security		Office of the Director of National Intelligence	Department of Veterans Affairs
	Information Technology Exchange Program (inactive)	President's Executive Exchange Program (inactive)	Cyber and Information Technology Exchange Program	Public-Private Talent Exchange	Exemplar Program	Loaned Executive Program	Public-Private Talent Exchange	Executive Management Fellowship Program
	Private-sector participants were required to submit financial disclosures and complete ethics trainings and were barred from accessing nonpublic information of business value. While on exchange to an agency, they were considered federal employees regarding federal ethics rules. Participating civil servants remained government employees while on exchange to the private sector and therefore were responsible for complying with federal ethics rules. Companies were prohibited from recouping the salary costs of their staff on exchange through federal contracts.	Private-sector participants were considered for the duration of the exchange to be government employees relative to federal laws and regulations pertaining to conflicts of interest, financial disclosure and standards of conduct.	Private-sector participants must submit financial disclosures and complete ethics trainings and may not access nonpublic information of business value. While on exchange to an agency, they are considered federal employees regarding federal ethics rules. Participants from companies that do business with DOD must undergo additional review by DOD's Office of General Counsel prior to the exchange. Companies may not recoup the cost of the salary of their staff on exchange through future contracts. Participating civil servants remain government employees while on exchange to the private sector and therefore are responsible for complying with federal ethics rules.	Private-sector participants must submit financial disclosures and complete ethics trainings and may not access nonpublic information of business value. While on exchange to an agency, they are considered federal employees regarding federal ethics rules. They may not supervise DOD employees or perform "inherently governmental" work unless requested by the secretary. At the conclusion of an exchange, private-sector participants must receive post-government employment advice from an agency ethics counselor. Companies may not recoup the cost of the salary of their staff on exchange through federal contracts. Companies that host staff from DOD's acquisition workforce will not be considered to have a conflict of interest solely because of that. DOD may not use the program to circumvent limitations on workforce size. Participating civil servants remain government employees while on exchange to the private sector and therefore are responsible for complying with federal ethics rules.	Participating civil servants remain government employees while on exchange to the private sector and therefore are responsible for complying with federal ethics rules.	Private-sector participants must submit financial disclosures, complete ethics reviews and undergo background investigations commensurate with clearance level. While on exchange to an agency, they are considered federal employees regarding federal ethics rules but may not work on procurement or other matters that will benefit their interests or the interests of their employer. They must sign nondisclosure agreements prohibiting dissemination of nonpublic information. Private-sector participants may not perform managerial or supervisory work; function in the DHS chain of command; do work performed by DHS's regular employees; or be posted to an SES position or one requiring presidential appointment.	Private-sector participants must submit financial disclosures and complete ethics trainings. They may not access non-public information of business value. While on exchange to an agency, they are considered federal employees regarding federal ethics rules, but they may not perform "inherently governmental" work unless requested by the secretary. Participating civil servants remain federal employees while on exchange to the private sector and therefore are responsible for complying with federal ethics rules. Companies may not recoup the cost of the salary of their staff on exchange through federal contracts. Intelligence agencies may not use the program to circumvent limitations on workforce size.	Private-sector participants are considered to be contractors for the duration of their exchange to an agency. Participating civil servants remain federal employees while on exchange to the private sector and therefore are responsible for complying with federal ethics rules.
5 C.F.R. Part 2634 - Executive Branch Financial Disclosure						X		
5 C.F.R. Part 2635 - Standards of Ethical Conduct for Employees of the Executive Branch						X		
5 U.S.C. 2301 - Merit System Principles		X			X			
5 U.S.C. 2302 - Prohibited Personnel Practices					X			
5 U.S.C. Chapter 81 - Compensation for Work Injuries							X	
5 U.S.C. Chapter 73 - Suitability, Security, and Conduct	X		X	X			X	
5a U.S.C. - Ethics in Government Act of 1978	X		X	X			X	
10 U.S.C. 2461 - Public-Private Competition Required Before Conversion to Contractor Performance				X			X	
18 U.S.C. 1905 - Disclosure of Confidential Information Generally	X		X	X			X	
18 U.S.C. 1913 - Lobbying with Appropriated Moneys	X		X	X			X	
18 U.S.C. 201 - Bribery of Public Officials and Witnesses	X		X	X			X	
18 U.S.C. 203 - Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government	X		X	X			X	
18 U.S.C. 205 - Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government	X		X	X			X	
18 U.S.C. 207 - Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches	X		X	X		X	X	X
18 U.S.C. 208 - Acts Affecting a Personal Financial Interest	X		X	X		X	X	
18 U.S.C. 209 - Salary of Government Officials and Employees Payable Only by the United States	X		X	X			X	
18 U.S.C. 603 - Making Political Contributions	X		X	X			X	
18 U.S.C. 606 - Intimidation to Secure Political Contributions	X		X	X			X	
18 U.S.C. 607 - Place of Solicitation	X		X	X			X	
18 U.S.C. 643 - Accounting Generally for Public Money	X		X	X			X	
18 U.S.C. 654 - Officer or Employee of United States Converting Property of Another	X		X	X			X	
26 U.S.C. 1043 - Sale of Property to Comply with Conflict-of-Interest Requirements	X		X					
31 U.S.C. 1343 - Buying and Leasing Passenger Motor Vehicles and Aircraft	X		X	X			X	
31 U.S.C. 1344 - Passenger Carrier Use								
31 U.S.C. 1349(b) - Adverse Personnel Actions	X		X	X			X	
41 U.S.C. 2104 - Prohibition on Former Official's Acceptance of Compensation From Contractor								
41 U.S.C. Chapter 21 - Restrictions on Obtaining and Disclosing Certain Information	X		X	X			X	X
Executive Order 12731 - Principles of Ethical Conduct for Government Officers and Employees						X		X
Federal Tort Claims Act	X							X