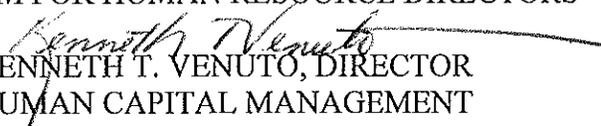




Department of Energy
Washington, DC 20585

MAY 13 2014

MEMORANDUM FOR HUMAN RESOURCE DIRECTORS

FROM: 
KENNETH T. VENUTO, DIRECTOR
HUMAN CAPITAL MANAGEMENT

SUBJECT: POLICY GUIDANCE MEMORANDUM # 35A
PROCEDURES FOR COMPLIANCE WITH NEPOTISM AND MISUSE OF
POSITION

This memorandum provides updated policy guidance and an updated certification form on the procedures for compliance with nepotism and misuse of position within the Department of Energy. This supersedes Policy Guidance Memorandum 35 "Procedures for Compliance with Nepotism and Misuse of Position" dated April 29, 2014 and the previous certification form dated March 2014.

On March 6, 2014, a DOECAS^T was issued on Nepotism and Misuse of Position that summarized the rules related to prohibited conduct of Federal employees in matters related to the employment of a relative or the award of a scholarship or a fellowship (copy attached).¹ Servicing Human Resources Offices and program managers who have oversight of hiring to include all Wage Grade, General Schedule or equivalent, Excepted Service, and Executive-level positions, third-party stipend-based and/or DOE funded internship and fellowship programs are responsible for ensuring the requirements are met. It cannot be over emphasized that Nepotism and Misuse of Position will not be tolerated. As a result, we have collaborated with the Office of the General Counsel to issue new Departmental procedures and implementing guidance to provide employees with sufficient information to ensure their compliance with regulations.

As stated in the Nepotism Statute at 5 U.S.C. 3110(b): "A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual."²

¹ As defined in 5 U.S.C. 3110(a)(3), "relative" means "an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."

² As defined in 5 U.S.C. 3110(a)(2), "public official" means "an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or



The Misuse of Position regulations at 5 CFR §2635.702 are designed to ensure that Federal employees remain impartial in the performance of their official duties. 5 C.F.R. 2635.702 states that "[a]n employee shall not use his public office for his own private gain or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations." A federal employee may not use his or her Government position, or the authority associated with his or her public office, to advocate on behalf of or to induce other DOE employees to provide a financial benefit to a friend or relative. Therefore a selecting official providing a benefit to a relative of a fellow DOE employee, at the urging of the DOE employee, is a violation of the Misuse of Position regulations by both the selecting official and the DOE relative. Misuse of position is subject to disciplinary action up to, and including removal of the employee from Federal service.

It is not appropriate for a Federal employee to advocate to other Federal employees or contractors with regard to employment of a relative, including a child's summer internship. In addition, a federal employee should not contact any individual in his or her office or any other office of DOE with regard to vacancies for employment for the benefit of a relative, including, dropping off a resume, affirmatively soliciting a position for the relative, or engaging in any action that advances the interests of the relative. A public official who violates this prohibition may be subject to disciplinary action, including removal. Further, if the relative is a minor child, a parent who participates in such activity is subject to the criminal provisions under title 18 of the United States Code. In accordance with 5 U.S.C. 3110 and 5 C.F.R. 2635.702, a DOE employee, who is a relative of an applicant, may not promote or advance that application, including dropping off a resume, affirmatively soliciting a position for the relative, or engaging in any action that advances the interests of the relative.

A Public Official is subject to the Nepotism restrictions. All employees are subject to the Misuse of Position restrictions.

Effective immediately, before finalizing selections on hiring actions, servicing Human Resources Offices (SHROs) are required to determine if selectees are relatives of DOE employees. To enhance compliance with these requirements, SHROs shall ensure the attached form is signed by the human resources specialist and the selecting official certifying that:

1. the selectee(s) have been reviewed by HR offices for relatives of DOE employees based on their answers to question 23 disclosing the relative(s) indicated by the applicants.
2. the selecting official, did not misuse his or her position as a Federal employee to advocate or advance the appointment, employment, promotion, or advancement of a relative; and
3. the selecting official was not approached or influenced by a DOE employee to hire a relative of that employee or to otherwise misuse his or her position as part of the selection process.

advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency."

Any employee involved in the hiring process, from servicing Human Resources professionals through the selecting official, must recuse him or herself if his or her relative appears on the applicant list. If a selecting official is approached by a colleague to hire a relative, the selecting official must disclose this information and seek advice from ethics counsel in the Office of the General Counsel before making a final selection. As of the issuance of this memorandum, any selectee chosen off a certificate of eligibles must be certified with the appropriate statement before an offer is made. Until such time as electronic signatures are uniform within Hiring Manager, SHROs must retain a copy of the attached form of the above statement digitally signed by the selecting official containing this certification.

Please ensure your immediate staff, hiring managers, and program managers are aware of these changes. If you have any questions, you may contact Jennifer Ackerman, Director of Human Capital Policy (HC-11) at jennifer.ackerman@hq.doe.gov or 202-568-3860.

Attachment "Nepotism and Misuse of Position" Certification Form