

SOCO ADVISORY

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Office of General Counsel
Standards of Conduct Office

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Application of Standards of Conduct to Personal Social Media Accounts

This advisory summarizes the rules that ethics officials should consider when advising DoD personnel on ethics issues that can arise from the personal use of social media. This advisory supplements guidance found in SOCO Advisory Number 21-02 (June 24, 2021) by incorporating DoD Instruction (DoDI) 5400.17, *Official Use of Social Media for Public Affairs Purposes* (Change 1, January 24, 2023) and Office of Government Ethics (OGE) Legal Advisory (LA) 23-03 (January 30, 2023). As used in this advisory, the terms “employee” and “personnel” refer to civilian and military personnel.

1. Use of Official Title, Government Position, or Official Photograph

SOCO continues to receive questions about whether DoD employees can refer to their government title or position, or display an official government photograph, on personal social media sites, particularly those sites that are used for professional networking.

The Standards of Conduct for Executive Branch Employees prohibit employees from using their official title, position, or any authority associated with their public office for private gain or in any manner that would create an appearance that the Government sanctions or endorses their activities or those of another. (5 C.F.R. §§ 702; 807(b)) OGE LA 15-03 explicitly applies these standards to the use of personal social media.

DoD recently published additional guidance on the personal use of social media. (DoDI 5400.17 (Jan. 24, 2023), Section 8) This instruction directs DoD personnel to maintain a clear distinction between personal and official social media accounts; ensure that their personal social media accounts are clearly identifiable as personal accounts; and avoid the use of DoD titles, insignia, uniforms, or symbols in a way that could imply DoD sanction or endorsement of the content. Where confusion or doubt are likely to arise regarding whether social media activity is personal or official, personnel are strongly encouraged to include a disclaimer clarifying that their social media communications reflect their personal views.

OGE has advised that an employee does not create the appearance of government sanction or endorsement simply by identifying his or her official title or position in an area of the personal social media account designated for biographical information. (OGE LA 15-03 (Apr. 9, 2015); OGE LA 14-08 (Nov. 19, 2014)) However, beyond this bright-line rule, OGE notes that ethics officials must consider the totality of the circumstances when evaluating whether an employee’s reference to their official title or position on a personal social media site violates the Standards of Conduct. OGE recommends considering the following factors to determine whether a

reasonable person with knowledge of the facts would conclude that the government sanctions or endorses the communication:

- Whether the employee states that they are acting on behalf of the government;
- Whether the employee refers to their connection to the government as support for the employee's statements;
- Whether the employee prominently features their agency's name, seal, uniform or similar items on the employee's social media account or in connection with specific social media activities;
- Whether the employee refers to their government employment, title, or position in areas other than those designated for biographical information;
- Whether the employee holds a highly visible position in the Government, such as a senior or political position, or is authorized to speak for the Government as part of the employee's official duties;
- Whether other circumstances would lead a reasonable person to conclude that the government sanctions or endorses the employee's social media activities.

It is SOCO's view that when DoD senior officials display an official government photograph in the profile section of their personal social media site, there is a greater likelihood that a reasonable person would construe this as an officially sanctioned DoD social media account. Senior DoD officials hold highly visible positions in the Government, and official government photographs include indicia of office such as the employee's uniform, agency seal, or rank. Therefore, to eliminate confusion, any DoD senior official who elects to display an official government photograph as their profile picture on a personal social media site should include a prominent and conspicuous disclaimer on that site. This guidance would not necessarily apply to non-profile photographs that a senior official may post on their personal social media site. Consistent with how the term "senior official" is defined in DoD and Office of Government Ethics regulations, senior officials would include PAS officials, Senior Executives (career and non-career), and General and Flag Officers. It is SOCO's view that enlisted members in the grade of E-9 have similar influence and status and should similarly avoid use of an official photograph on personal social media without a proper disclaimer.

A disclaimer should be readily ascertainable to the casual viewer. For example, the disclaimer may follow the job title or position, as noted in the example below:

Director, Capabilities Assessment Program (Views are my own)

Non-senior DoD personnel (O-6 and below, E-8 and below, and GS-15 and below) who display an official government photograph in the profile section of a personal social media site must also avoid creating any confusion about whether the site is personal or official. DoD personnel must comply with the Standards of Conduct, and ethics counselors must continue to apply the criteria

listed above when advising DoD personnel about the use of their official title, government position, or official photograph on a personal social media site. For example, non-senior personnel who hold significant leadership positions, such as a commanding officer or senior enlisted advisor, should be cautious and include a disclaimer if using an official photo on their personal social media profile.

Example 1. A general officer creates a personal social media account on a professional networking site. Immediately below their name, they post their official title, rank, and current duty assignment. The site allows for a profile picture, and the general officer displays their current official photograph, which depicts them in uniform and standing in front of an American flag and general officer flag. Because the general officer is a senior official and has chosen to display an official photograph in the profile section, a reasonable person may be confused about whether this is an official DoD account or personal account. To mitigate confusion, the general officer should include a disclaimer that states that any views are their own, and do not reflect the views of the DoD.

Posting a disclaimer is designed to eliminate confusion about whether the social media site is an official Department of Defense site or a personal site. DoD employees remain responsible for the content published on their personal sites, and posting a disclaimer does not relieve an employee from personal accountability for posting content that does not adhere to the Standards of Ethical Conduct.

2. Do Not Conduct Official Business on Personal Social Media Accounts.

DoDI 5400.17 prohibits personnel from conducting official DoD business on personal social media accounts and prohibits the use of a personal social media account as an avenue for friends, followers, or private contacts to gain access to DoD programs or to seek official action from DoD personnel.

The Standards of Conduct prohibit employees, including DoD personnel from providing preferential treatment to a non-Federal entity. (5 C.F.R. § 2635.101(b)(8)) If a non-Federal entity was able to use a personal social media connection with a DoD employee to solicit official action, information, or other official business, that could constitute improper preferential treatment since that communication channel would not be available to other non-Federal entities. Therefore, DoD employees must ensure that they refrain from engaging in official communication using a personal social media account. If a DoD employee receives an official communication on a personal social media site, they are not obligated to respond, but may inform the sender of the proper way to request official action.

Example 2. An employee accepts an invitation to connect with a new acquaintance on a personal social media platform. According to the profile page, this acquaintance works for a DoD contractor. Subsequently, the acquaintance sends a message to the employee seeking a meeting with the employee's supervisor to present information about new capabilities that may result in additional business for the contractor. The employee should not schedule the meeting but may provide the acquaintance with the contact information for the supervisor's scheduler. The employee should make it clear that

providing the contact information should not be represented by the acquaintance to the scheduler as a recommendation by the employee to schedule the meeting.

Of note, this restriction does not prohibit a DoD employee from commenting about their official position or duties on a personal social media site (provided they do not disclose non-public information) (*see* OGE LA 15-03). However, DoD employees must refrain from routinely using a personal social media site to disseminate official information and should consider using (or establishing) an official social media site to disseminate official information.

Example 3. A DoD employee gives an unclassified official presentation at a conference hosted by a non-Federal entity and wants to post a link to a video of the speech on their personal social media site to inform their followers. The DoD employee may post the link. However, if the primary purpose of the post is to disseminate official information about the presentation to DoD personnel, or to convey DoD's official position on a matter, the employee should post the link on an official DoD social media site since the presentation was given in an official capacity. DoD employees should not routinely use personal social media accounts to disseminate official DoD information.

3. Do Not Use Official Position for Personal Financial Gain.

The Standards of Ethical Conduct for Employees of the Executive Branch prohibit the use of one's public office for private gain. (5 C.F.R. § 2635.702) The Standards of Conduct also prohibit using one's Government position or title to endorse any product, service, or enterprise, unless a specific regulatory exception applies. (5 C.F.R. § 2635.702(c).) DoDI 5400.17 provides additional guidance by clearly prohibiting the use of official titles, photographs of a service member in uniform, or any other display that indicates one's status as a DoD employee or service member to endorse any product, service, or enterprise.

In this instance, the use of a disclaimer would not mitigate the inappropriate use of one's name, image, or likeness as a DoD employee to endorse a product or service. While a disclaimer is useful to clarify that a social media account is a personal account and thus avoid the appearance of governmental sanction, a disclaimer does not mitigate or excuse the use of one's official position to endorse any product, service, or enterprise, or for personal financial gain. Ethics officials must consider the specific facts when advising on this issue, but as a threshold question, may want to ask whether it appears that a DoD employee or service member is using their status as a DoD employee or service member to enhance the credibility of their reviews, promotions, or endorsements.

Example 4. Sergeant Smith is an active-duty non-commissioned officer. She is an avid hiker, and in her free time she reviews hiking boots on a personal social media site on which she identifies herself as an active-duty military member and displays photographs of herself in uniform. On her profile page, she posts a disclaimer that states "Views are my own and do not represent DoD." In her most recent review of a commercial hiking boot, she posts "*As a soldier, I know the importance of a well-fitting boot. Trust me when I say you will love this boot!*" Sergeant Smith's endorsement, combined with the overt references to and images of her official position, indicate that she has inappropriately used her official title and position to endorse a

product. Under these circumstances, the use of a disclaimer does not permit her to use her official status to endorse a product.

Example 5. Using the same facts described in example 4, above, Sergeant Smith also includes a link to purchase the hiking boot she has reviewed. For every item purchased using that link, Sergeant Smith receives a payment from the boot manufacturer. Under these circumstances, Sergeant Smith has used her official position for personal gain by accepting compensation from a third party. Her use of a disclaimer would not permit her to use her official status to endorse a product and receive compensation based on that endorsement.

Example 6. Mr. Jones is a personal trainer. He maintains his own business website and promotes his personal training business on several personal social media sites. Mr. Jones is also a master sergeant in the Air Force Reserve. He does not refer to his status as a member of the Air Force Reserve on his business website and does not identify himself as an Air Force reservist in the profile section of any of his personal social media sites. However, on one of his personal social media sites, there are several photographs of him in uniform. Under these circumstances, the inclusion of a few photographs of Mr. Jones in uniform, with no discussion of how his status as a reserve noncommissioned officer enhances his abilities as a personal trainer, does not indicate that he is using his official title or position for personal gain, or to endorse any product, service or enterprise.

4. **References.** OGE Legal Advisory (LA) 14-08, *Reference to Official Title and Position by Employees Affiliated with Outside Organizations in Their Personal Capacity*, November 19, 2014; OGE LA 15-03, *The Standards of Conduct as Applied to Personal Social Media Use*, April 9, 2015; OGE LA 23-03, *The Standards of Conduct and 18 U.S.C. § 208 as Applied to Official Social Media Use*, January 30, 2023; SOCO Legal Advisory 21-02, *Application of the Standards of Conduct to Personal Social Media Accounts*, June 24, 2021; Department of Defense Instruction 5400.17, *Official Use of Social Media for Public Affairs Purposes, Change 1*, January 24, 2023.

DISCLAIMER: The purpose of this advisory is to disseminate relevant information and sources of general guidance, policy, and law on Government Ethics issues to the Department of Defense ethics community. Advisories are not intended to be and should not be cited as authoritative guidance, DoD policy, or law.

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