

Subject:

Criteria for judgment of subjective intent to violate recusal obligations as set forth in the Act on Recusal of Public Servants Due to Conflicts of Interest (hereinafter referred to as "This Act") during a stage of the year-end performance appraisal and assessment of the public servant himself/herself or related persons. Please take note and notify subordinate agencies.

Description:

1. Performance appraisals that affect the granting of bonuses and promotions fall in the category of non-property interests. The interpretation of Official Letter No. 0961114152 issued by this Ministry on October 4 2007, may be cited as the reference. Article 6 of this Act further stipulates that "A public servant shall recuse himself as soon as he/she is aware of the conflicts of interest."
Awareness of conflicts of interest as defined in Article 6 of this Act refers to deliberate acts with purpose and intention rather than negligence. This includes awareness and deliberate instigation of matters that violate administrative obligations or subjective intent to tolerate encountered violations of administrative obligations.
2. Performance appraisals for public servants are annual routine duties of government agencies. All agency personnel are fully appraised. Performance evaluations range from supervisor appraisal to qualification screening and reviews by the Ministry of Civil Service and involve assessments, preliminary evaluations, re-evaluations, approvals, and qualification screening and reviews of public servants by their working agencies, competent authorities, and the Ministry of Civil Service. The criteria for judgment of subjective intent to violate recusal obligations on the part of public servants during different stages of the year-end performance appraisals of the public servant himself/herself or related persons are as follows:
 - (1) Stage of supervisor evaluations with regard to items on the performance appraisal form :
 - a. Scores awarded by supervisors are based on verification and appraisal of the daily work performance of the appraisee. Awarded scores serve as a key reference for reviews and discussions of the Performance Evaluation Committee. These scores serve as suggestions and have an actual impact on the final appraisals.
 - b. Due to the fact that supervisors directly evaluate the appraisees, it is difficult to claim based on the rule of thumb that public servants are unaware of conflicts of interest where they fail to recuse themselves during this stage. It can therefore be determined that there is intent on

their part to violate recusal obligations set forth in Article 6 and 10 of this Act.

(2) Stage of preliminary evaluations by the Performance Evaluation Committee :

- a. The main purpose of the Performance Evaluation Committee which has been established pursuant to the regulations set forth in Article 15 of the Public Functionaries Merit Evaluation Act is defined as follows pursuant to the regulations set forth in Article 5 of the Organic Regulations of the Performance Evaluation Committee: The committee is organized based on democratic and collegial principles. With regard to year-end performance evaluations of appraisees, the duties and responsibilities of the committee include fair and objective evaluations and determination of preliminary assessment scores for appraisees through joint deliberations based on unit supervisor evaluations. These evaluations have a significant impact on the rights and interests of the appraisees. Unless agency chiefs object to the results of these preliminary evaluations or supervising agencies detect violations of the Performance Evaluation Act, the results of committee decisions have a substantial impact.
- b. Pursuant to regulations set forth in Article 5 of the Performance Evaluation Committee Organic Regulations, the committee shall provide all committee members in attendance with performance appraisal lists and forms and other relevant information for review, examination, and deliberation, voting, and record on performance appraisal forms during committee meetings for preliminary assessment or reconsideration of year-end performance appraisals. Where public servants fail to recuse themselves during this stage, it is therefore hard to claim that they are unaware of conflicts of interest during this stage unless the committee is unable to make the public servant aware of their involvement or that of related persons for certain reasons during the performance evaluation process. It can therefore, be determined that there is intent on their part to violate recusal obligations set forth in Article 6 and 10 of this Act.

(3) Stage of re-evaluations by agency chiefs:

- a. The results of preliminary evaluations by the Performance Evaluation Committee shall be re-evaluated by agency chiefs. As stated above, the Performance Evaluation Committee is a democratic and collegial body composed of designated members and elected members. The

Performance Evaluation Committee has been established to ensure compliance with proper legal procedures and discussion of performance evaluation items of agency appraisees based on a democratic and collegial mechanism. Where agency chiefs disagree with the results of the preliminary evaluations, their opinions shall be submitted to the Performance Evaluation Committee for reconsideration. If they still disagree with the results of the reconsideration process, they may make alterations by stating their reasons. Unless similar circumstances exist, re-evaluations shall be based on resolutions of the Performance Evaluation Committee.

- b. Where public servants fail to recuse themselves during the agency chief re-evaluation stage, judgment of intent shall be based on the following criteria:
 - (a) Where agency chiefs and related public servants agree with the original results and decisions of the Performance Evaluation Committee without making any alterations during re-evaluation procedures or upon reporting of committee meeting minutes to the agency chiefs for approval in accordance with proper administrative procedures, the following shall apply: Where concrete evidence exists that agency chiefs have created records of performance appraisal results of agency personnel based on resolutions of the Performance Evaluation Committee or cannot be unaware of the performance appraisals of potentially related persons, the seal of approval of the agency chief shall not be taken as direct evidence for subjective intent.
 - (b) Where agency chiefs express disagreement with the preliminary evaluations and performance appraisal records of potentially related persons, submit their opinions to the Performance Evaluation Committee for reconsideration, or still disagree with the results of the reconsideration process and make alterations by stating their reasons, and committee meeting minutes have been reported to the agency chiefs for approval in accordance with proper administrative procedures, the following shall apply: Where public servants return performance evaluation records of related persons for reconsideration or make alterations thereof during the reporting and approval process, there is sufficient evidence to assume intent in violation of Article 6 and 10 of this Act provided that they fail to recuse

themselves.

- (4) Stage of approval by competent authorities or authorized affiliated agencies and qualification screening and reviews by the Ministry of Civil Service:
 - a. Paragraph 2, Article 21 of the Enforcement Rules of the Public Functionaries Merit Evaluation Act stipulates that “where supervising agencies detect violations of performance evaluation laws during evaluation and forwarding or approval of performance appraisals of subordinate agencies, they shall return such records to the original performance evaluation agency to ensure handling pursuant to applicable laws.” Article 16 of the Public Functionaries Merit Evaluation Act further stipulates that “where violations of performance evaluation laws are detected when public servant performance appraisal records are submitted to the Ministry of Civil Service for qualification screening and review, relevant records shall be returned to the original performance appraisal organization for handling pursuant to applicable laws in accordance with the original submission procedures.
 - b. Where public servants fail to recuse themselves during the stage of approval by supervising agencies or qualification screening and reviews by the Ministry of Civil Service, judgment of intent shall be based on the following criteria:
 - (a) Where acceptance of the results and decisions of the original performance appraisal agency without any alterations is expressed and concrete evidence exists that public servants have created records of performance appraisal results of agency personnel or cannot be unaware of the performance appraisals of potential related persons, the seal of approval of the public servant shall not be taken as direct evidence for subjective intent.
 - (b) Where violations of performance evaluation laws exist and public servants fail to recuse themselves from the process of return to the original performance evaluation agencies and handling of performance evaluation records of potential related persons, there is sufficient evidence to assume intent in violation of Article 6 and 10 of this Act.
3. With regard to the criteria for judgment of subjective intent as specified above, agencies shall weigh all statements, investigation results, and evidence and

identify the truth based on logic and experience in actual cases pursuant to the regulations set forth in Article 43 of the Administrative Procedure Act when applying this Act. Intent by public servants in violation of this Act shall be determined on a case-by-case basis.

4. Where concrete evidence exists that public servants make use of their official power, opportunities, or methods in the context of their official duties to obtain improper benefits for related persons during a stage of the year-end performance appraisal and assessment of the public servant himself/herself or related persons, Article 7 of this Act shall apply.