I. Purpose:
The purpose of this Notice is to establish the Agency’s policy on pro bono legal activities by SBA employees. Given the significant unmet need for legal services in the nation and in keeping with the goals of Executive Order 12988, SBA encourages and supports efforts by its employees to provide pro bono legal services within their communities. This policy provides guidance to ensure that SBA employees engaging in such outside activities do so consistent with applicable federal statutes and regulations governing conflicts of interest and outside activities.

For purposes of this Notice, the term SBA employees does not include those employees in the Office of Inspector General (OIG). Consistent with the provisions and intent of the Inspector General Act of 1978, as amended, OIG will maintain independent authority and responsibility for establishing its own pro bono policies for OIG employees.

II. Definitions & Requirements:

A. Pro bono legal services: legal services performed without compensation and include, but are not limited to, the provision of legal services to: (1) persons of limited means or other disadvantaged persons; (2) charitable, religious, civic, community, governmental, health, and educational organizations in matters that are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose; (3) individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; or (4) activities seeking to improve the law, the legal system, or the legal profession.

B. Designated Agency Ethics Official (DAEO): The DAEO is designated by the Administrator to manage and administer the Agency’s Ethics Program. The DAEO and his/her designees are responsible for ensuring, among other things, that potential or actual conflicts of interest or appearances thereof are identified and remedied.

C. Pro Bono Coordinator: The SBA Pro Bono Coordinator is the employee within the Office of General Counsel (OGC) who has volunteered to coordinate the Agency’s Pro Bono Program, act as liaison with the Interagency Pro Bono Working Group, and serves as the Point of Contact for SBA employees seeking to engage in pro bono legal services as an outside activity.
D. Pro Bono Notification Process (PBNP): Upon receiving a prospective pro bono case or before working in a walk-in clinic or a legal rights workshop, and after consulting his/her supervisor to engage in such activities, the SBA employee must email the Pro Bono Coordinator and carbon copy his/her supervisor with the PBNP. The PBNP must include: (1) name, title, and contact information of SBA employee seeking to work on pro bono services; (2) name and contact information of SBA employee’s supervisor; (3) name and case number; (4) brief description of case, including the type of case, the possibility of litigation, etc.; (5) indicating whether the case could require appearing before any federal body; and (6) whether the case was referred through the Department of Justice Pro Bono Program (DOJ). If the case was not referred through the DOJ, the SBA employee must name the organization referring the case, or if it is being done in his/her private capacity.

A PBNP is required for each pro bono service the SBA employee wishes to engage in.

III. Ethics Considerations for Pro Bono Services as Outside Activities

A. Office of Government Ethics (OGE) Regulations on Conflicts of Interest
SBA employees may not engage in pro bono legal services that create or appear to create a conflict of interest with their work for the Agency. Under the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, a conflict of interest generally exists where the outside activity, pro bono legal services in this case, would:

1. require the recusal of the employee from significant aspects of the employee’s official duties, see 5 C.F.R. § 2635.802(b);
2. create an appearance that the employee’s official duties were performed in a biased or less than impartial manner, see 5 C.F.R. § 2635.502; or
3. create an appearance of official sanction or endorsement, see 5 C.F.R. § 2635.702(b).

B. Criminal Statute 18 U.S.C. § 205
With limited exceptions, SBA employees may not represent third parties before the federal government, or in a matter in which the United States is a party or has a direct and substantial interest. SBA employees may not represent third parties where violations of federal law are alleged or where an appeal alleges violation of federal legal or constitutional rights.

Before agreeing to represent a pro bono client in a matter that could require appearing before any Federal body (e.g. any department, court, or commission), the SBA employee must consult with the employee’s supervisor and Pro Bono Coordinator to ensure that the appearance does not violate 18 U.S.C. § 205.
C. Conflicts of Interest Advice from DAEO

An SBA employee must not engage in pro bono legal services that conflict with his/her official duties. The employee must consult with the employee's supervisor prior to engaging in any pro bono legal service, including non-representational activities such as a walk-in clinic or a legal rights workshop. The employee is responsible for providing the necessary information to the supervisor and Pro Bono Coordinator during this consultation process. In the case of participation in a walk-in clinic or a legal rights workshop, the SBA employee should state so in his/her PBNP.

If SBA employee wishes to engage in pro bono legal services not coordinated by the DOJ, the Pro Bono Coordinator will conduct the initial conflicts of interest check. If the Pro Bono Coordinator finds conflicts of interest, the SBA employee must not engage in the pro bono legal service. If the Pro Bono Coordinator does not find conflicts of interest after the initial review, he/she will forward the PBNP to the DAEO and/or his/her designees for further conflicts of interest review. The SBA employee may not engage in pro bono legal services until a final conflicts of interest review has been conducted and the pro bono legal service has been cleared.

IV. Other Relevant Ethics Provisions for Pro Bono Legal Services as Outside Activities

A. Misuse of Position, Title, and Authority

1. Private Capacity

An SBA employee who provides pro bono legal services shall not use his/her official SBA title, position or authority, or in any other way indicate or represent that he/she is acting on behalf of SBA or in his/her official capacity. See 5 CFR Part 2635, subpart G. The SBA employee is responsible for ensuring that there is no misunderstanding by the client, any opposing parties, or others involved in a pro bono matter, that the attorney is acting in his/ her individual capacity as a volunteer, and is not acting as a representative of, or on behalf of, the Agency or the Federal government.

2. Use of Government Property and Equipment

i. Letterhead, business cards, seal, logo, etc.: an SBA employee shall not use Agency letterhead, business cards, fax cover-sheets, or SBA’s seal or logo in connection with his/ her pro bono legal activities.

ii. Use of Agency Email: an SBA employee may not use Agency email to communicate with pro bono legal clients. An SBA employee may use Agency e-mail to consult with the SBA Pro Bono Representative, DAEO or Pro Bono Coordinator, or another SBA employee also working on a pro bono case. Occasional use of Agency email to
communicate with colleagues on a question related to a pro bono matter is also permitted. However, the SBA employee is advised that there is no expectation of privacy or confidentiality with regard to his or her SBA e-mail communications.

iii. **Use of Agency Mail:** except in limited circumstances, an SBA employee may not receive correspondence related to pro bono activities at his/ her office address. Generally, the legal services provider with whom a pro bono volunteer is working accepts mail related to the pro bono matter on behalf of the volunteer. An SBA employee should consult with the pro bono coordinator if he/she does not have an address other than his/ her home address at which to receive pro bono correspondence.

iv. **Use of Government Property:** as a general rule, employees may use government property only for official purposes. See 5 C.F.R. § 2635.101(b)(9) and § 2635.704(a). Limited personal use is authorized during non-work time if: (1) it involves minimal additional expense to the Agency; (2) it does not reduce the SBA employee’s productivity or interfere with his/ her official duties or the official duties of others; (3) the SBA employee is already authorized to use the equipment for official Agency business; and (4) it is legal and appropriate. See Section 4 of SOP 90 49 1.

An SBA employee may use government property for pro bono work if the use meets the criteria above. Examples of limited uses that involve minimal additional expense to the Agency include use of electricity, ink, small amounts of paper, and occasional faxes and telephone calls within the office's commuting area or that are charged to non-government accounts.

Limited use does not include the use of Government vehicles or the Government mail for sending correspondence. Employees should contact their supervisor if there is any question whether an intended use involves a "minimal additional expense."

v. **Computer Assisted Legal Research:** use of computer assisted legal research, e.g. Westlaw or Lexis, for pro bono work is permissible only if it involves minimal additional expense to the government. See Section 4 of SOP 90 49 1. Employees using computer assisted
research tool should enter "pro bono" as the client identifier when signing on to computer assisted research tool.

3. Use of Official Time
   i. Hours of Work: SBA employees are encouraged to seek pro bono legal opportunities that can be accomplished outside their scheduled working hours. Recognizing that some pro bono activities may require actions during the workday (e.g., court filings or appearances), supervisors are urged to be flexible and to accommodate, where feasible, the efforts of their employees to do pro bono legal work.

   ii. Administrative Leave: an employee seeking to participate in pro bono activities during work hours may be granted leave without pay or annual leave, or limited administrative leave, as discussed below. The supervisor may grant up to 4 hours of administrative leave monthly to engage in the pro bono legal opportunity, provided that the employee matches each hour of administrative leave with an hour of personal leave (annual, compensatory or credit). Administrative leave may not be granted for pro bono activities that directly benefit an employee or those with whom an employee has a personal relationship.

An April 6, 2004 memorandum issued by the Director, Office of Personnel Management (OPM), concerning "Participation of Federal Employees in Volunteer Activities," encourages agencies to support the volunteer efforts of its employees and an additional OPM memorandum provides guidance on scheduling work and granting time off to permit federal agency employees to participate in volunteer activities. Copies of these memoranda are available on the OPM website: http://www.opm.gov/oca/leave/html/Volunteer2.asp

4. Clerical Support Staff, Interns, and Subordinates
   i. Clerical Support Staff and Interns: Pro bono legal activities are not official duties and may not be assigned to or otherwise required of support staff or interns. The employee performing pro bono legal activities may, however, accept an unsolicited offer for assistance from other SBA employees as long as they are not subordinates and the pro bono work is performed outside scheduled working hours.
ii. Subordinates: as with clerical staff and interns, pro bono legal activities may not be assigned to or otherwise required of subordinates. In addition, the employee performing pro bono legal activities may not accept an unsolicited offer for assistance from a subordinate.

V. Additional Considerations

A. Retainer Agreement
An SBA employee undertaking pro bono cases in a representational capacity must prepare and execute a retainer agreement setting out the agreed scope of work and making explicit to the pro bono legal client that the attorney is acting in his/ her own individual capacity and not on behalf of the Agency. The pro bono legal client must countersign the retainer agreement in acknowledgment of this fact. The SBA Pro Bono Coordinator will have available a model retainer agreement.

SBA employees participating in non-representational activities, such as walk-in clinics or legal rights workshops, do not need to prepare and execute retainer agreements.

B. Malpractice Coverage
Before agreeing to meet with or accept a pro bono legal client, the SBA employee should determine whether the referring pro bono program or organization has a malpractice insurance policy that covers volunteer attorneys. SBA does not provide malpractice coverage for pro bono work. Immunities that may be granted to government attorneys in the performance of their official duties do not extend to pro bono work. Therefore, SBA strongly encourages SBA employees to work with a legal services provider that carries malpractice insurance. Employees who choose to provide legal services without malpractice insurance coverage are acting at their own risk.

C. Restrictions on the Unauthorized Practice of Law
SBA employees should be aware that local bar and professional licensing rules, including those regarding the unauthorized practice of law, apply to pro bono legal services. For example, pursuant to Rule 49 of the District of Columbia Court of Appeals, government attorneys may provide pro bono legal services in the District of Columbia as long as they are members in good standing of a state bar, take cases on referral from an organization providing pro bono legal services, and are supervised by an active member of the District of Columbia Bar.
D. Change in Employment
SBA employees representing pro bono legal clients enter an attorney-client relationship with their pro bono clients; therefore, if they leave the Agency, they are obligated either to take their pro bono cases with them or to make alternative arrangements for continuity of representation. Departing employees should contact the referring organization if this situation arises. Attorneys in this situation are reminded that they are bound by ethical rules, local practice rules, and their retainer agreements when terminating representation of clients. In the event that a case is transferred, the attorney must discuss the transfer with the client, file with the Court any necessary petitions seeking leave to withdraw from representation, and provide all relevant case files to the new attorney(s) undertaking the case.

VII. Disclaimer
This Policy Notice is intended only to encourage increased pro bono legal activities by SBA employees, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SBA will not be responsible in any manner or to any extent for any negligent or otherwise tortious acts or omissions on the part of any SBA employee engaged in any pro bono activity. While SBA encourages pro bono activities by its employees, SBA exercises no control over the services and activities of employees engaged in pro bono activities, nor does it control the time or location of any pro bono activity. Each employee is acting outside the scope of his/her employment whenever the employee participates, supports or joins in any pro bono or volunteer activity.